

2023 No. 1052

BUILDING AND BUILDINGS, ENGLAND

**The Building (Restricted Activities and Functions) (England)
Regulations 2023**

<i>Made</i>	- - - -	<i>19th September 2023</i>
<i>Laid before Parliament</i>		<i>29th September 2023</i>
<i>Coming into force</i>	- -	<i>6th April 2024</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 1, 46A and 54B of, and paragraph 10 of Schedule 1 to, the Building Act 1984(a).

The Secretary of State has consulted the regulator and such other persons as the Secretary of State considers appropriate in accordance with section 120B(3) of the Building Act 1984.

Citation, extent, application and commencement

1.—(1) These Regulations may be cited as the Building (Restricted Activities and Functions) (England) Regulations 2023.

(2) These Regulations extend to England and Wales and apply in relation to buildings or building work in England.

(3) These Regulations come into force on 6th April 2024.

Interpretation

2. In these Regulations—

“the 1984 Act” means the Building Act 1984;

“the 2010 Regulations” means the Building Regulations 2010(b);

“the HRB Regulations” means the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023(c);

“building” has the meaning given in the 2010 Regulations(d);

“building work” has the meaning given in the 2010 Regulations.

(a) 1984 c. 55. Sections 46A and 54B were inserted by section 44 of the Building Safety Act 2022 (c. 30). Section 120B was inserted by paragraph 77 of Schedule 5 to the Building Safety Act 2022.

(b) S.I. 2010/2214 as amended by S.I. 2012/3119, 2013/1959, 2014/110, 2015/767, 2016/285, 2016/1274, 2018/1230, 2021/1391, 2021/1392, 2022/603, 2022/984, 2023/520 and 2023/911.

(c) S.I. 2023/909.

(d) The definition of “building” was substituted by S.I. 2023/911.

Restricted activities and functions: local authorities

3.—(1) For the purposes of section 46A(1) of the 1984 Act, in relation to local authorities, each of the following activities is prescribed as a restricted activity—

- (a) where plans relating to any building work are submitted to a local authority under any provision of the 2010 Regulations, the checking of those plans for compliance with any requirement of the building regulations(a) which is applicable to the work;
- (b) where an inspection of building work is to be carried out by a local authority for the purpose of checking compliance with any requirement of the building regulations which is applicable to the work, the carrying out of that inspection and scheduling the stages or points for inspections.

(2) For the purposes of section 46A(2) of the 1984 Act, in relation to local authorities, each of the following functions is prescribed as a restricted function—

- (a) determining an application for a direction under section 8 of the 1984 Act (relaxation of building regulations)(b);
- (b) determining an application for building control approval(c) under regulation 14A of the 2010 Regulations (determination of applications for building control approval with full plans) including exercising, in relation to such an application, a power in—
 - (i) section 19(1) of the 1984 Act (use of short-lived materials),
 - (ii) section 21(4) of the 1984 Act (provision of drainage), or
 - (iii) section 25(1) of the 1984 Act (provision of water supply);
- (c) fixing a period on the expiration of which a building or work must be removed, extending such a period, imposing conditions in relation to a building or varying such conditions, under section 19(2) or (3) of the 1984 Act (use of short-lived materials);
- (d) requiring a building to be drained in combination under section 22 of the 1984 Act (drainage of buildings in combination);
- (e) giving consent under section 23 of the 1984 Act (provision of facilities for refuse);
- (f) giving a notice or granting a certificate under section 25(3) of the 1984 Act (provision of water supply);
- (g) giving a certificate under regulation 17 or 17A of the 2010 Regulations (completion certificates and partial completion certificates)(d);
- (h) deciding, where regulation 18 of the 2010 Regulations (unauthorised building work) applies, whether—
 - (i) a regularisation certificate under regulation 18 of the 2010 Regulations may be given;
 - (ii) any reasonable steps are required under regulation 18(3) of the 2010 Regulations;
- (i) deciding, where regulation 19(1) of the Building (Approved Inspectors etc.) Regulations 2010(e) (partly completed work) applies, whether—
 - (i) plans given under regulation 19(2)(a) of those Regulations are sufficient to show that the intended work would not contravene any requirement of the 2010 Regulations;
 - (ii) an owner should be required to cut into, lay open or pull down any of the work under regulation 19(2)(b) of those Regulations;
- (j) exercising any power under section 33 of the 1984 Act (tests for conformity with building regulations);

(a) See section 122 of the 1984 Act for the definition of “building regulations”.

(b) Sections 8, 19, 21, 22, 23 and 25 of the 1984 Act were amended by Schedule 5 to the Building Safety Act 2022.

(c) See paragraph 1B of Schedule 1 to the 1984 Act for the definition of building control approval. Paragraph 1B was inserted by section 33 of the Building Safety Act 2022. Regulation 14A was inserted into the 2010 Regulations by S.I. 2023/911.

(d) Regulation 17A was inserted into the 2010 Regulations by S.I. 2012/3119.

(e) S.I. 2010/2215, to which there are amendments not relevant to this instrument.

- (k) deciding, for the purposes of section 35 of the 1984 Act (offence of contravening building regulations etc), whether there is a contravention of a provision of the building regulations or a requirement imposed by virtue of any such provision;
- (l) giving a compliance notice under section 35B of the 1984 Act (compliance notices)(a);
- (m) giving a stop notice under section 35C of the 1984 Act (stop notices);
- (n) giving a section 36 notice(b) or deciding to pull down or remove work or effect alterations in it as deemed necessary under section 36(3) of the 1984 Act;
- (o) deciding whether to withdraw a section 36 notice following the giving of a written report under section 37(1)(a) of the 1984 Act;
- (p) giving a notice under section 52A(4) of the 1984 Act (cancellation of initial notice)(c).

Restricted functions: the regulator

4.—(1) Subject to paragraph (2), for the purposes of section 46A(2) of the 1984 Act, where the regulator(d) is the building control authority in relation to a higher-risk building under section 91ZA of the 1984 Act (building control authorities)(e) each of the following functions is prescribed as a restricted function—

- (a) determining an application for a direction under section 8 of the 1984 Act (relaxation of building regulations);
- (b) determining an application for building control approval under regulation 7 or 15 of the HRB Regulations (building control approval applications) including exercising, in relation to such an application, a power in—
 - (i) section 19(1) of the 1984 Act (use of short-lived materials),
 - (ii) section 21(4) of the 1984 Act (provision of drainage), or
 - (iii) section 25(1) of the 1984 Act (provision of water supply);
- (c) giving approval, pursuant to a requirement imposed on a building control approval, that work may proceed beyond a point specified in the requirement;
- (d) fixing a period on the expiration of which a building or work must be removed, extending such a period, imposing conditions in relation to a building or varying such conditions, under section 19(2) or (3) of the 1984 Act (use of short-lived materials);
- (e) requiring a building to be drained in combination under section 22 of the 1984 Act (drainage of buildings in combination);
- (f) giving consent under section 23 of the 1984 Act (provision of facilities for refuse);
- (g) giving a notice or granting a certificate under section 25(3) of the 1984 Act (provision of water supply);
- (h) determining an application under regulation 24 of the HRB Regulations (change control applications: decisions);
- (i) deciding that a controlled change is a notifiable or major change under regulation 25 of the HRB Regulations (change control: regulator power to specify notifiable changes and major changes);
- (j) determining an application under regulation 44 of the HRB Regulations (completion certificate applications: decisions);
- (k) determining an application under regulation 45 of the HRB Regulations (partial completion certificates);

(a) Section 35B and 35C were inserted into the 1984 Act by section 38 of the Building Safety Act 2022 (c. 30).

(b) See the definition in section 36(4) of the Building Act 1984.

(c) Section 52A was inserted into the 1984 Act by section 46 of the Building Safety Act 2022.

(d) The Health and Safety Executive is the building safety regulator, see the definition of the regulator in section 126 of the Building Act 1984, the definition was inserted by paragraph 81 of Schedule 5 to the Building Safety Act 2022.

(e) Section 91ZA was inserted into the 1984 Act by section 32 of the Building Safety Act 2022.

- (l) determining an application under regulation 47 of the HRB Regulations (regularisation of unauthorised building work);
- (m) exercising any power under section 33 of the 1984 Act (tests for conformity with building regulations);
- (n) deciding, for the purposes of section 35 of the 1984 Act (offence of contravening building regulations etc), whether there is a contravention of a provision of the building regulations or a requirement imposed by virtue of any such provision;
- (o) giving a compliance notice under section 35B of the 1984 Act (compliance notices);
- (p) giving a stop notice under section 35C of the 1984 Act (stop notices);
- (q) giving a section 36 notice or deciding to pull down or remove work or effect alterations in it as deemed necessary under section 36(3) of the 1984 Act;
- (r) deciding whether to withdraw a section 36 notice following the giving of a written report under section 37(1)(a) of the 1984 Act.

(2) In relation to any case which falls within paragraph 9, 10 or 11 of Schedule 3 to the HRB Regulations, reference in paragraph (1) to any provision of the HRB Regulations is to be treated as a reference to that provision as modified, in relation to that particular case, by Schedule 3 to those Regulations.

(3) For the purposes of section 46A(2) of the 1984 Act, where the regulator is the building control authority in relation to building work pursuant to a regulator's notice each of the following functions is prescribed as a restricted function—

- (a) determining an application for a direction under section 8 of the 1984 Act (relaxation of building regulations);
- (b) determining an application for building control approval under regulation 14A of the 2010 Regulations (determination of applications for building control approval with full plans) including exercising, in relation to such an application, a power in—
 - (i) section 19(1) of the 1984 Act (use of short-lived materials),
 - (ii) section 21(4) of the 1984 Act (provision of drainage), or
 - (iii) section 25(1) of the 1984 Act (provision of water supply);
- (c) fixing a period on the expiration of which a building or work must be removed, extending such a period, imposing conditions in relation to a building or varying such conditions, under section 19(2) or (3) of the 1984 Act (use of short-lived materials);
- (d) requiring a building to be drained in combination under section 22 of the 1984 Act (drainage of buildings in combination);
- (e) giving consent under section 23 of the 1984 Act (provision of facilities for refuse);
- (f) giving a notice or granting a certificate under section 25(3) of the 1984 Act (provision of water supply);
- (g) giving a certificate under regulation 17 or 17A of the 2010 Regulations (completion certificates and partial completion certificates);
- (h) deciding, where regulation 18 of the 2010 Regulations (unauthorised building work) applies, whether—
 - (i) a regularisation certificate under regulation 18 of those Regulations may be given;
 - (ii) any reasonable steps are required under regulation 18(3) of those Regulations;
- (i) exercising any power under section 33 of the 1984 Act (tests for conformity with building regulations);
- (j) deciding, for the purposes of section 35 of the 1984 Act (offence of contravening building regulations etc), whether there is a contravention of a provision of the building regulations or a requirement imposed by virtue of any such provision;
- (k) giving a compliance notice under section 35B of the 1984 Act (compliance notices);
- (l) giving a stop notice under section 35C of the 1984 Act (stop notices);

- (m) giving a section 36 notice or deciding to pull down or remove work or effect alterations in it as deemed necessary under section 36(3) of the 1984 Act;
- (n) deciding whether to withdraw a section 36 notice following the giving of a written report under section 37(1)(a) of the 1984 Act.

Restricted activities and functions: registered building control approvers

5.—(1) For the purposes of section 54B(2) of the 1984 Act each of the following activities is prescribed as a restricted activity—

- (a) where an initial notice(a), amendment notice(b) or plans certificate(c) is to be given in relation to any building work, the checking of plans to which the notice or certificate relates for compliance with any requirement of the building regulations which is applicable to the work;
- (b) where an inspection of building work is to be carried out by the registered building control approver for the purpose of checking compliance with any requirement of the building regulations which is applicable to the work, the carrying out of that inspection (including scheduling the stages or points for inspections).

(2) For the purposes of section 54B(3) of the 1984 Act each of the following functions is prescribed as a restricted function—

- (a) giving an initial notice to a local authority under section 47 of the 1984 Act (initial notices) including an initial notice combined with a plans certificate or a new initial notice under section 53(7) of the 1984 Act (new initial notices);
- (b) giving a plans certificate to a local authority under section 50 of the 1984 Act (plans certificates);
- (c) giving a final certificate to a local authority under section 51 of the 1984 Act (final certificates);
- (d) giving an amendment notice to a local authority under section 51A of the 1984 Act (variation of work to which initial notice relates);
- (e) giving a notice under section 52(1)(c), 52(2) or 52A(1) of the 1984 Act (cancellation of initial notice);
- (f) giving a transfer certificate and a transfer report to a local authority under section 53B(3) of the 1984 Act (new initial notice: change of registered building control approver).

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

Lee Rowley

Parliamentary Under Secretary of State

19th September 2023

Department for Levelling Up, Housing and Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a list of the activities and functions of local authorities, the building safety regulator (the Health and Safety Executive) and registered building control approvers which are restricted under sections 46A and 54B of the Building Act 1984 (c. 55). Those sections were inserted into that Act by section 44 of the Building Safety Act 2022 (c. 30).

(a) See section 47 of the Building Act 1984 for the definition of “initial notice”.
(b) See section 51A of the Building Act 1984 for the definition of “amendment notice”.
(c) See section 50 of the Building Act 1984 for the definition of “plans certificate”.

A restricted function may only be exercised by the body in relation to work once they have received advice from a registered building inspector whose registration has effect in relation to work of that description.

For local authorities, regulation 3(2) gives the list of functions which are restricted functions. For the regulator, regulation 4(1) gives the list of functions which are restricted functions when the regulator is the building control authority in relation to a higher-risk building. And regulation 4(3) gives the list of functions which are restricted when the regulator is acting as the building control authority under a regulator's notice (see section 91ZB of the Building Act 1984). For registered building control approvers, regulation 5(2) gives list of functions which are restricted functions.

A restricted activity, in relation to work of a particular description, may only be carried out by a local authority or a registered building control approver through a registered building inspector whose registration includes work of that description. Regulations 3(1) and 5(1) provide that the two activities which are restricted activities are the checking of plans (whether given to the body with an application or otherwise) and the inspection of building work for compliance with the requirements of the building regulations.

A full impact assessment of the effect that this instrument will have on the costs to business is published with an Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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