
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.

Commencement Information

I1 Reg. 5 in force at 4.7.2023, see [reg. 1\(1\)](#)

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⁾).

Commencement Information

I2 Reg. 6 in force at 4.7.2023, see [reg. 1\(1\)](#)

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.

Commencement Information

I3 Reg. 7 in force at 4.7.2023, see [reg. 1\(1\)](#)

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.

Commencement Information

I4 Reg. 8 in force at 4.7.2023, see [reg. 1\(1\)](#)

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.

Commencement Information

I5 Reg. 9 in force at 4.7.2023, see [reg. 1\(1\)](#)

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.

Commencement Information

I6 Reg. 10 in force at 4.7.2023, see [reg. 1\(1\)](#)

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;
- (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.

Commencement Information

I7 Reg. 11 in force at 4.7.2023, see [reg. 1\(1\)](#)

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.

Commencement Information

I8 Reg. 12 in force at 4.7.2023, see [reg. 1\(1\)](#)

Changes to legislation: *There are currently no known outstanding effects for the The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023, CHAPTER 1. (See end of Document for details)*

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