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BUILDING AND BUILDINGS, ENGLAND

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

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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 126, 127, 128, 129 and 168 of the Building Safety Act 2022(a).

In accordance with section 168(6) of that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 and come into force on the day after they are made.

(2) These Regulations extend to England and Wales and apply in England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Building Safety Act 2022;

“adjusted operating profits” has the meaning given in regulation 11(4);

“financial year” means the financial year as determined in accordance with section 390 of the Companies Act 2006(b);

“prohibitions list” means the list published under regulation 20(1)(b);

“relevant building” has the meaning given in regulation 3;

“the scheme” means the Responsible Actors Scheme established by regulation 5;

“Self Remediation Contract” has the meaning given in regulation 21(1);

“Self Remediation Terms” has the meaning given in regulation 21(1);

“specified period” means the financial years ending in 2017, 2018 and 2019;

“wound up” has the meaning given in the Self Remediation Terms.

(2) In these Regulations—

(a) “group” in relation to a person (“A”) means A and any body corporate which is associated with A (within the meaning given in section 131 of the Act) and for the purposes of regulations 7(1)(b), 8(1)(a) and 9(1)(a) includes any body corporate which has been wound up, but which before it was wound up was associated with A;

(b) a body corporate is to be treated as controlled by another body corporate in the circumstances set out in sections 131(2) to 131(6) of the Act;

(c) a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(c) or as receiver in relation to A or any assets of A, or any body corporate in the same group as A or its assets, is not to be treated as being in the same group as A;

(a) 2022 c. 30.

(b) 2006 c. 46.

(c) 1986 c. 45.

(d) a body corporate in which an insolvency practitioner in their capacity as an insolvency practitioner is a partner, a director or a shareholder, or with which such insolvency practitioner has any employment, consultancy or similar arrangement in that capacity is not to be treated as a member of the same group as A;

(e) a bank, financial institution, trust, fund or other entity—

(i) which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets; and

(ii) which has made debt financing available to A or any other body corporate in the same group as A in the ordinary course of its business and on arm's length terms, is not to be treated as a member of the same group as A solely by reason of the provision and terms of such debt financing and any associated security or collateral arrangements.

(3) For the purposes of regulations 7 to 9, a person is to be treated as being responsible for the development or refurbishment of a building if that person would be treated as playing a role as a developer or refurbisher in relation to that building in accordance with the definition of "Building" in the Self Remediation Terms and as if "PD Group Company" in that definition was substituted with "person".

Relevant buildings

3.—(1) In these Regulations, a relevant building means a building which—

(a) is a residential building,

(b) is at least 11 metres high and located in England, and

(c) has been developed or refurbished during the period starting on 5th April 1992 and ending on 4th April 2022 ("the relevant period").

(2) For the purposes of paragraph (1), a "residential building" is a self-contained building or self-contained part of a building, which—

(a) contains, at the date these Regulations come into force, at least one dwelling held under the terms of a lease with a term exceeding 21 years or as commonhold land, or

(b) is owned by a registered provider of social housing.

(3) A building does not cease to be a residential building because it also contains premises which are not dwellings.

(4) In this regulation—

(a) section 117 of the Act applies for the purposes of determining whether a building or part of a building is self-contained;

(b) the height of a building will be determined in accordance with the definition of "Building" in the Self Remediation Terms.

Notices

4.—(1) Any notice or notification required to be given or issued under these Regulations must be in writing.

(2) Any such notice or notification may be given or issued in satisfaction of any requirement under these Regulations by—

(a) delivering or sending it to, or leaving it at—

(i) the addressee's registered office, the addressee's principal place of activity, or the addressee's home address (as applicable); or

(ii) another address supplied by the addressee for the purposes of these Regulations or under the Self Remediation Contract, or

(b) electronic means, by sending it to an email address provided by the addressee for the purposes of these Regulations or under the Self Remediation Contract.

(3) Where no address is supplied or is otherwise available under paragraph (2), or if an address under paragraph (2) is outside the United Kingdom, any requirement to give or issue a notice or notification under these Regulations is to be treated as satisfied where reasonable steps are taken to deliver or send the notice.

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(a)).

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.

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;

(a) 2006 c. 46.

- (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(a);

(a) 2022 c. 3.

- (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^(a); 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—

(a) 2006 c. 46.

- (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.

PART 3

Planning and Building Control Prohibitions

CHAPTER 1

Application

Application of prohibitions

28.—(1) Subject to paragraph (2), this Part applies to the following persons—

- (a) those persons who at the date of being included on the prohibitions list are treated as eligible or have been determined to be eligible to be members of the scheme in accordance with regulation 14 but who at that date have not become members in accordance with that regulation;
- (b) those persons who were members of the scheme but who, at the date of being included on the prohibitions list, are no longer members of the scheme following revocation of membership under regulation 26,
(together with paragraph (a), “eligible non-members”); and
- (c) those persons who are controlled by any eligible non-member.

(2) This regulation does not apply to a person until the date they are included on the prohibitions list and will apply only to persons who are included on the prohibitions list.

(3) For the purposes of this Part “an applicable person” is a person who falls within paragraph (1) and is included on the prohibitions list.

CHAPTER 2

Prohibition on Development

Planning prohibition

29.—(1) An applicable person is prohibited from carrying out major development of land in England.

(2) An applicable person is prohibited from carrying out major development of land in England through any agent or contractor or any other person acting for or on their behalf.

(3) In this regulation, “major development” has the meaning given by article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015(a).

(4) This regulation is subject to regulation 31.

Notice of prohibition

30.—(1) An applicable person must notify the relevant local planning authority that they are a person to whom regulation 29 applies when—

- (a) they apply for planning permission, or make a subsequent application for, or relating to, major development;
- (b) they acquire an interest in land, or a contractual entitlement to develop land, which has the benefit of planning permission for major development; or
- (c) they transfer all their interest in land which has the benefit of such a permission to a person that is not an applicable person.

(2) An applicable person must notify the relevant local planning authority when they cease to be an applicable person.

(3) In this regulation—

“relevant local planning authority” means the local planning authority for the area in which the major development is to be carried out;

“subsequent application” has the same meaning as in regulation 32.

Exception for critical national infrastructure

31.—(1) The Secretary of State may disapply the prohibition in regulation 29 in relation to an applicable person in respect of a specific site, if in the view of the Secretary of State—

- (a) the development or proposed development relates to critical national infrastructure; and
- (b) it is in the public interest to disapply the prohibition.

(2) In this regulation—

“critical national infrastructure” means those elements of infrastructure, the loss or compromise of which or inadequate provision of which may result in—

- (i) a major detrimental impact on the availability, integrity or delivery of essential services, including services whose integrity, if compromised, could result in significant loss of life or casualties, taking into account significant economic or social impacts;
- (ii) a significant impact on national security, national defence, or the functioning of the state,

and includes development which is necessary to facilitate the safe or effective construction or operation of the critical national infrastructure concerned;

“elements of infrastructure” means the assets, facilities, systems or networks that operate or facilitate the operation of the infrastructure.

Transitional provision

32.—(1) The prohibition in regulation 29 does not apply to development for which planning permission has been granted before the date on which these Regulations come into force, unless a subsequent application is required for all or part of the development, and that application has not been determined before that date.

(2) For the purpose of this regulation and regulation 30, “subsequent application” means an application for approval of a matter where the approval—

(a) S.I. 2015/595, as read with the definition of “development” in section 55 of the Town and Country Planning Act 1990 (c. 8).

- (a) is required by or under a condition to which the planning permission is subject; and
- (b) must be obtained before all or part of the development permitted by the planning permission may be begun.

CHAPTER 3

Building Control Prohibitions

Building control prohibitions

33.—(1) An applicable person is subject to each of the building control prohibitions in section 129(4) of the Act.

(2) This regulation is subject to regulations 34, 35, 36, 37 and 38.

(3) An applicable person may not give any document listed in paragraph (4) and accordingly those documents are prescribed for the purposes of section 129(4)(g) of the Act.

(4) The documents referred to in paragraph (3) are—

- (a) an initial notice within the meaning of section 47 of the Building Act 1984 (giving and acceptance of initial notice);
- (b) a building notice within the meaning of regulation 2 of the Building Regulations 2010 (interpretation);
- (c) a request for plans certificate under section 50(1) (plans certificate) of the Building Act 1984;
- (d) an amendment notice within the meaning of section 51A of the Building Act 1984 (variation of work to which initial notice relates);
- (e) an application for a certificate under regulation 17 (completion certificates) or 17A (certificate for building occupied before work is completed) of the Building Regulations 2010;
- (f) an application for a certificate under regulation 18 of the Building Regulations 2010 (unauthorised building work).

(5) No person may give any document listed in paragraph (6) to an applicable person or to any other person in respect of works carried out or to be carried out by an applicable person and accordingly those documents are prescribed for the purposes of section 129(4)(h) of the Act.

(6) The documents referred to in paragraph (5) are—

- (a) a notice of passing or rejection of plans within the meaning of section 16(6) of the Building Act 1984;
- (b) a certificate under regulation 17 of the Building Regulations 2010 (completion certificates);
- (c) a certificate under regulation 17A of the Building Regulations 2010 (certificate for building occupied before work is completed);
- (d) a plans certificate within the meaning of section 50 (plans certificate) of the Building Act 1984;
- (e) a final certificate within the meaning of section 51 (final certificate) of the Building Act 1984;
- (f) a regularisation certificate within the meaning of regulation 18(5) of the Building Regulations 2010 (unauthorised building work).

(7) No person may accept any document listed in paragraph (8) where it is given by an applicable person and accordingly those documents are prescribed for the purposes of section 129(4)(i) of the Act.

(8) The documents referred to in paragraph (7) are—

- (a) plans deposited under section 16 of the Building Act 1984;
 - (b) an initial notice within the meaning of section 47 of the Building Act 1984 (giving and acceptance of initial notice);
 - (c) an amendment notice within the meaning of section 51A of the Building Act 1984 (variation of work to which initial notice relates);
 - (d) a plans certificate within the meaning of section 50 (plans certificate) of the Building Act 1984;
 - (e) a final certificate within the meaning of section 51 (final certificate) of the Building Act 1984;
 - (f) an application for a certificate under regulation 17 (completion certificates) or 17A (certificate for building occupied before work is completed) of the Building Regulations 2010;
 - (g) an application for a certificate under regulation 18 of the Building Regulations 2010 (unauthorised building work).
- (9) An applicable person may not take any action prohibited by this regulation through any agent or contractor or any other person acting for or on their behalf.

Exception to building control prohibition: emergency repair work

34.—(1) Where an applicable person proposes to carry out building work which consists of emergency repair work then, subject to paragraph (2), the provision by them of a building notice pursuant to regulation 12(8) of the Building Regulations 2010 is not to be treated as a breach of a building control prohibition.

(2) Paragraph (1) applies only where—

- (a) each of the criteria in regulation 12(8)(a) to (c) of the Building Regulations 2010 are satisfied;
- (b) the applicable person gives the local authority the relevant building notice as soon as reasonably practicable after the commencement of the work and explains on giving that notice—
 - (i) that they are an applicable person but that this provision applies to them; and
 - (ii) the nature of the emergency repairs required to be undertaken.

Exception to building control prohibition: work to occupied buildings

35.—(1) An applicable person is not prohibited from—

- (a) depositing plans under section 16 of the Building Act 1984;
- (b) giving an initial notice within the meaning of section 47 of the Building Act 1984 (giving and acceptance of initial notice); or
- (c) giving a building notice within the meaning of regulation 2 of the Building Regulations 2010 (interpretation),

in relation to relevant building work to be carried out to an existing occupied building where on the application date the work had not started.

(2) Where plans are deposited pursuant to paragraph (1) the local authority is not prohibited from giving the applicable person a notice of passing or rejection in relation to those plans under section 16(6) of the Building Act 1984.

(3) Where an initial notice is given pursuant to paragraph (1) the local authority is not prohibited from giving the applicable person a notice accepting or rejecting that initial notice under section 47 of the Building Act 1984.

(4) Where relevant building work is carried out to an existing occupied building following the depositing or giving of a document under paragraph (1)—

- (a) then the applicable person is not prohibited from giving—

- (i) an application for a certificate under regulation 17 of the Building Regulations 2010 (completion certificates) in relation to the work;
 - (ii) an application for a certificate under regulation 17A of the Building Regulations 2010 (certificate for building occupied before work is completed) in relation to the work;
 - (iii) a request for a plans certificate under section 50(1) (plans certificate) of the Building Act 1984 in relation to the work;
- (b) then, in respect of the work, a person may give to the applicable person—
- (i) a plans certificate within the meaning of section 50 (plans certificate) of the Building Act 1984 in relation to the work;
 - (ii) a final certificate within the meaning of section 51 (final certificate) of the Building Act 1984 in relation to the work.

(5) Where paragraph (4) applies the local authority is not prohibited from giving the person a certificate under regulation 18 of the Building Regulations 2010 in relation to the work.

(6) Where paragraph (4) applies the local authority is not prohibited from giving the person a notice accepting or rejecting that final certificate under section 51 of the Building Act 1984.

(7) In this regulation—

“application date” means the date on which the document referred to in paragraph (1) is deposited or given by the applicable person;

“dwelling” has the meaning in regulation 2 of the Building Regulations 2010;

“material change of use” has the meaning in regulation 5 of the Building Regulations 2010;

“occupied”, in relation to a building, means at least one dwelling contained in the building is occupied by an arm’s length third party on the application date;

“relevant building work” means any building work except work done to give effect to a material change of use of the building or part of the building.

Exception to building control prohibition: purchasers

36.—(1) The Secretary of State may on the application of an applicable person grant an exception to the building control prohibitions—

- (a) to permit the issuing by a local authority of a certificate under regulation 17 (completion certificate) of the Building Regulations 2010;
- (b) to permit the acceptance by a local authority of a final certificate within the meaning of section 51 (final certificate) of the Building Act 1984 in relation to a particular building;

in respect of a specific building where the Secretary of State is satisfied that the criteria in paragraph (2) are met.

(2) The criteria in this paragraph are met where—

- (a) before the applicable person became an applicable person—
 - (i) building work in respect of the building had been commenced by the applicable person;
 - (ii) there is a person who exchanged a contract for the sale and purchase of a dwelling contained in the building, or for the building where it comprises a single dwelling (“the purchaser”);
 - (iii) the purchaser has paid or is liable to pay to the seller of the dwelling or building a deposit in accordance with the terms of that contract;
- (b) the purchaser is not in the same group as the applicable person and the purchase of the dwelling or building is an arm’s length transaction at market value and on arm’s length terms;
- (c) the purchase of the dwelling or building is for domestic and not for business or commercial purposes; and

(d) the Secretary of State is satisfied that the interests of the purchaser will be materially prejudiced if the exception is not granted and that the grant of the exception is not contrary to or likely to frustrate the purposes of the scheme set out at regulation 5.

(3) An application under this regulation must—

(a) be made in writing;

(b) be supported by evidence as to each of the criteria in paragraph (2).

(4) The Secretary of State may, by notice in writing, require the applicant to provide by a time specified in the notice any further information which the Secretary of State requires to make a determination under this regulation.

(5) If a person required to provide information under paragraph (4) does not provide the specified information within the period specified in the notice, their application under this regulation is to be treated as having been refused.

(6) An application under this regulation must be made before any document referred to in paragraph (1) is sought, given, issued or accepted, and any such document sought or purported to be given, issued or accepted (as the case may be) before the Secretary of State has granted an exception under this regulation is not to be treated as validly given, issued or accepted.

Exception to building control prohibitions and modification of the Building Regulations 2010: regularisation

37.—(1) A relevant purchaser is not prohibited from giving an application for a certificate under regulation 18 (unauthorised building work) of the Building Regulations 2010 and a local authority is not prohibited from granting such a certificate.

(2) In this regulation “relevant purchaser” means—

(a) any purchaser or owner of an individual dwelling built by an applicable person, or

(b) any purchaser or owner of any building or any part of a building built by an applicable person,

provided that the relevant purchaser is not in the same group as the applicable person and the purchase is an arm’s length transaction where the purchaser acquired the dwelling or building or part of a building in the ordinary course of business (where applicable), at market value and on arm’s length terms.

(3) For the purposes of paragraph (1), regulation 18 of the Building Regulations 2010 is to have effect in relation to an application for a certificate under that regulation by a relevant purchaser as if any work carried out by an applicable person which was not unauthorised building work (within the meaning set out in that regulation) were treated as if it were unauthorised building work.

Exception for critical national infrastructure

38.—(1) The Secretary of State may disapply any or all of the building control prohibitions in relation to an applicable person in respect of a specific building or site, if in the view of the Secretary of State—

(a) the building work or proposed building work relates to critical national infrastructure; and

(b) it is in the public interest to disapply the prohibition.

(2) In this regulation—

“critical national infrastructure” means those elements of infrastructure, the loss or compromise of or inadequate provision of which may result in—

(a) major detrimental impact on the availability, integrity or delivery of essential services, including services whose integrity, if compromised, could result in significant loss of life or casualties, taking into account significant economic or social impacts;

(b) a significant impact on national security, national defence, or the functioning of the state,

and includes building works which are necessary to facilitate the safe or effective construction or operation of the critical national infrastructure concerned;

“elements of infrastructure” means the assets, facilities, systems or networks that operate and facilitate the infrastructure.

Effect of things done in contravention of these Regulations

39.—(1) Where, notwithstanding the prohibitions imposed by regulation 33, a document referred to in regulation 33(3) or (5) is given, then—

- (a) that document is not to be treated as validly given, and
- (b) any decision or action taken in relation to such a document is not to be treated as validly taken, in particular—
 - (i) no plans purported to be passed are to be treated as validly passed;
 - (ii) no notice purported to be accepted is to be treated as validly accepted;
 - (iii) no certificate purported to be granted is to be treated as validly granted;
 - (iv) no application purported to be granted is to be treated as validly granted.

(2) Where, notwithstanding the prohibitions imposed by regulation 33, a document referred to in regulation 33(7) is accepted, then—

- (a) that document is not to be treated as validly accepted, and
- (b) any decision or action taken in relation to such a document is not to be treated as validly taken, in particular—
 - (i) no plans purported to be passed is to be treated as validly passed;
 - (ii) no notice purported to be accepted is to be treated as validly accepted;
 - (iii) no certificate purported to be accepted or granted is to be treated as validly accepted or granted;
 - (iv) no application purported to be granted is to be treated as validly granted.

Transitional provision

40.—(1) The prohibitions imposed by regulation 33 do not affect the validity of any document given by or to the applicable person, where that document is given by or to them on a date before that person was an applicable person.

(2) The prohibitions imposed by regulation 33 do not affect the validity of the acceptance of any document which is given by the applicable person, where that acceptance is given on a date before that person was an applicable person.

CHAPTER 4

Enforcement and disapplication of the prohibitions to certain persons not in the building industry

Application of Part 7 (Enforcement) of the Town and Country Planning Act 1990

41. Part 7 of the Town and Country Planning Act 1990(a) applies in respect of a breach of the prohibition in regulation 29 with the modifications set out in the Schedule to these Regulations.

(a) 1990 c. 8. Section 173ZA was inserted by section 43(2) of Planning (Wales) Act 2015 (anaw 4). Section 187A was inserted by section 2 of the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”). Section 189 was amended by paragraph 11 of Schedule 1 to the 1991 Act. Section 190 was amended by Part I of Schedule 19 to the 1991 Act. Sections 191 to 194 were substituted by section 10(1) of the 1991 Act; section 191 was amended by section 124(3) of the Localism Act 2011 (c.

Exception: disapplication of the prohibitions to certain persons not in the building industry

42.—(1) In respect of persons referred to in regulation 28(1)(c) only, a person who receives a notice under regulation 20(3) may make an application in writing to the Secretary of State in accordance with this regulation requesting that the planning and building control prohibitions not be applied to them on the ground they are not a person in the building industry.

(2) Subject to paragraphs (3) to (8), an exception under paragraph (1) must be granted where the Secretary of State is satisfied that the person applying for the exception is not a person in the building industry.

(3) Where the Secretary of State grants an exception under this regulation, it may be revoked at any time and the person to whom it was granted included on the prohibitions list, if the Secretary of State considers that the person has commenced carrying on activities in the building industry.

(4) An application under this regulation must—

- (a) be accompanied by evidence as to why the applicant is not a person in the building industry;
- (b) state that, if the application is granted, the applicant undertakes to notify the Secretary of State if they commence or intend to commence carrying on activities in the building industry.

(5) The Secretary of State may refuse the application if the statement in paragraph (4)(b) is not provided.

(6) The Secretary of State may, by notice in writing, require the applicant to provide by a time specified in the notice any further information which the Secretary of State requires to make a determination under this regulation.

(7) If a person requested to produce information under paragraph (6) does not, within the period specified in the notice, produce the specified information, their application under paragraph (1) is to be treated as having been refused.

(8) The Secretary of State may not grant an exception under this regulation unless satisfied that granting the exception is not contrary to or likely to frustrate the purposes of the scheme provided for in regulation 5.

PART 4

Review

Review

43.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of that review.

(2) Section 30(4) of the 2015 Act requires that the report must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision,
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way that involves less onerous regulatory provision.

20). Section 195 was amended by section 32 of the 1991 Act, section 241(3)(4) of the Planning Act 2008 (c. 29) and S.I. 2014/2773. Section 196 was amended by paragraph 33 of Schedule 7 to the 1991 Act. There are other amendments to this Part which are not relevant to this instrument.

(3) Section 30(5) of the 2015 Act requires that the first report must be published before the fifth anniversary of the date on which these Regulations come into force.

(4) Section 30(6) of the 2015 Act requires that subsequent reports must be published at intervals not exceeding five years.

(5) In this regulation—

“the 2015 Act” means the Small Business, Enterprise and Employment Act 2015;

“regulatory provision” has the meaning given in section 32 of the 2015 Act.

3rd July 2023

Lee Rowley
Parliamentary Under Secretary of State
Department for Levelling Up, Housing and Communities

SCHEDULE

Regulation 41

Modifications to the Town and Country Planning Act 1990

1. Part 7 of the Town and Country Planning Act 1990(a) applies—

(a) as if the following sections were omitted—

- (i) section 173ZA (enforcement warning notice: Wales);
- (ii) section 187A (enforcement of conditions);
- (iii) section 189 (penalties for contravention of orders under s. 102 and Schedule 9);
- (iv) section 190 (enforcement of orders under s. 102 and Schedule 9);
- (v) sections 191 to 196 (certificate of lawful use or development); and
- (vi) section 196D (offence of failing to obtain planning permission for demolition of unlisted etc buildings in conservation area in England);

(b) subject to the modifications set out in the following paragraphs of this Schedule.

Modification of section 171A (expressions used in connection with enforcement)

2. Section 171A(b) applies as if—

(a) for subsection (1) there were substituted—

“(1) For the purposes of this Part, carrying out any material operation in contravention of the prohibition in regulation 29 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023, constitutes a breach of planning control.”;

(b) for subsection (3), there were substituted—

“(3) In this Part—

“planning permission” includes permission under Part III of the 1947 Act, or of the 1962 Act or of the 1971 Act;

(a) 1990 c. 8. Section 173ZA was inserted by section 43(2) of Planning (Wales) Act 2015 (anaw 4). Section 187A was inserted by section 2 of the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”). Section 189 was amended by paragraph 11 of Schedule 1 to the 1991 Act. Section 190 was amended by Part I of Schedule 19 to the 1991 Act. Sections 191 to 194 were substituted by section 10(1) of the 1991 Act; section 191 was amended by section 124(3) of the Localism Act 2011 (c. 20). Section 195 was amended by section 32 of the 1991 Act, section 241(3)(4) of the Planning Act 2008 (c. 29) and S.I. 2014/2773. Section 196 was amended by paragraph 33 of Schedule 7 to the 1991 Act. There are other amendments to this Part which are not relevant to this instrument.

(b) Section 171A was inserted by section 4(1) of the 1991 Act.

“the prohibition” means the prohibition in regulation 29 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023;

“Responsible Actors Scheme” means the scheme established under regulation 5 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023;”;

(c) after subsection (3) there were inserted—

“(4) In this section, “material operation” has the meaning given in section 56(4).”.

Modification of section 171C (power to require information about activities on land)

3. Section 171C(a) applies as if—

(a) in subsection (1), for paragraph (b) there were substituted—

“(b) appears to the local planning authority to have breached planning control.”;

(b) in subsection (2)—

(i) at the end of paragraph (a), “and” were omitted;

(ii) at the end of paragraph (b), there were inserted—

“and

(c) any matter relating to that person’s membership of the Responsible Actors Scheme or the application at any time of the prohibition to that person,”;

(c) in subsection (4)(a), for the words “to apply for planning permission” to the end, there were substituted “to remedy the breach of planning control”.

Modification of section 171E (temporary stop notice)

4. Section 171E applies as if in subsection (1)—

(a) in paragraph (a), at the end “and” were omitted;

(b) paragraph (b) were omitted.

Modification of section 171F (temporary stop notice: restrictions)

5. Section 171F applies as if—

(a) in subsection (1), paragraph (b) were omitted;

(b) subsections (2) to (4) were omitted.

Modification of section 171H (temporary stop notices: compensation)

6. Section 171H applies as if for it there were substituted—

“**171H.**—(1) Subject to paragraph (2), this section applies where—

(a) a temporary stop notice is issued; and

(b) either—

(i) it is determined that there has not been a breach of planning control; or

(ii) the authority withdraws the notice.

(2) This section does not apply in a case where a person is member of the Responsible Actors Scheme on or after the day on which a copy of the notice is first displayed as mentioned in section 171E(6), whether or not their membership has been treated as having retrospective effect.

(a) Section 171E to 171H were inserted by section 52 of the Planning and Compulsory Purchase Act 2004 (c. 5). Section 171G was also amended by S.I. 2015/664. There are other amendments to these sections which are not relevant to this instrument.

(3) A person who at the time the notice is served has an interest in the land to which the notice relates is entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition effected by the notice.

(4) Subsections (3) to (7) of section 186 apply in relation to a claim for compensation payable under this section—

- (a) as they apply to compensation payable under that section; and
- (b) reading each reference to a “stop notice” in those subsections as if it were a reference to a temporary stop notice.”.

Modification of section 172 (issue of enforcement notice)

7. Section 172 applies as if for subsection (1)(b) there were substituted—

“(b) that it is expedient to issue the notice”.

Modification of section 173 (contents and effect of notice)

8. Section 173 applies as if—

- (a) for subsection (1) there were substituted—

“(1) Subject to subsection (10), an enforcement notice must state the matters which appear to the local planning authority to constitute the breach of planning control.”;
- (b) in subsection (2), for “subsection (1)(a)” substitute “subsection (1)”;
- (c) for subsection (4), there were substituted—

“(4) Those purposes are—

 - (a) ensuring compliance with the prohibition;
 - (b) remedying any injury to amenity which has been caused by the breach.”;
- (d) for subsection (10) there were substituted—

“(10) An enforcement notice must—

 - (a) specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise;
 - (b) contain a list of the names and addresses of the persons on whom a copy of the enforcement notice has been served;
 - (c) be accompanied by an explanatory note providing information relating to—
 - (i) any relevant right of appeal;
 - (ii) the grounds on which an appeal may be brought under this Part.”.

Modification of section 174 (appeal against enforcement notice)

9. Section 174(a) applies as if—

- (a) in subsection (2), paragraphs (a) and (f) were omitted;
- (b) subsections (2A), (2B) and (2D) to (2F) were omitted;
- (c) in subsection (4)—
 - (i) in the opening words, for “prescribed time” there were substituted “time specified in subsection (4A)”;
 - (ii) for paragraph (b), there were substituted—

“(b) setting out briefly the facts on which the person proposes to rely in support of each of those grounds.”;

(a) Section 174 has been amended by section 61 of the 1991 Act, S.I. 2003/956, section 123(4) of the Localism Act 2011, paragraph 5 of Schedule 17 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

(d) after subsection (4), there were inserted—

“(4A) If the statement in writing referred to in subsection (4) is not included with the notice of appeal, it must be delivered to the Secretary of State not later than 14 days after the date on which the Secretary of State sends the person concerned a notice requiring that person to do so.”;

(e) in subsection (5), for “prescribed time” there were substituted “time specified in subsection (4A)”.

Modification of section 175 (appeals: supplementary provisions)

10. Section 175 applies as if—

(a) for subsections (1), there were substituted—

“(1) The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 apply to appeals under section 174 as if—

(a) Part 2 were omitted;

(b) regulation 9(1)(b) were omitted.”;

(b) subsections (2) were omitted;

(c) at the end there were inserted—

“(8) The following Regulations and rules apply to appeals under section 174—

(a) the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002(a);

(b) the Town and Country Planning (Enforcement) (Determination by inspectors) (Inquiries Procedure) (England) Rules 2002(b);

(c) the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002(c);

(d) the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002(d), but as if regulation 7(4)(b) were omitted.”.

Modification of section 176 (general provisions relating to determination of appeals)

11. Section 176 applies as if—

(a) in subsection (1), for “On an appeal” there were substituted “Subject to subsection (1A), on an appeal”;

(b) after subsection (1), there were inserted—

“(1A) Nothing in subsection (1) permits the Secretary of State to determine the question of whether the appellant is eligible to be a member of the Responsible Actors Scheme if that question has already been determined in accordance with regulation 14 and 16 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023.”;

(c) in subsection (3)(a), for “prescribed time” there were substituted “time specified in section 174(4A)”.

Modification of section 177 (grant or modification of planning permission on appeals against enforcement notices)

12. Section 177 applies as if for it there were substituted—

(a) S.I. 2002/2686.

(b) S.I. 2002/2685.

(c) S.I. 2002/2684.

(d) S.I. 2002/2683.

“177. On the determination of an appeal under section 174, the Secretary of State may determine whether, on or before the date on which the appeal was made, major development of land in England was being carried out in breach of the prohibition.”.

Modification of section 180 (effect of planning permission, etc, on enforcement or breach of condition notice)

13. Section 180 applies as if—

(a) for subsection (1) there were substituted—

“(1) Where after the service of a copy of an enforcement notice the person undertaking development to which the notice applies ceases to be a prohibited person within the meaning of regulation 29 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (“the 2023 Regulations”), the notice ceases to have effect so far as it is inconsistent with the 2023 Regulations.”;

(b) subsection (2) were omitted;

(c) in subsection (3), “or breach of condition notice” were omitted.

Modifications of section 181 (enforcement notice to have effect against subsequent development)

14. Section 181 applies as if for it there were substituted—

“181. Compliance with any requirements in an enforcement notice does not discharge the notice, and accordingly, any resumption of major development after they have been discontinued in compliance with the enforcement notice will be in contravention of the enforcement notice”.

Modification of section 183 (stop notices)

15. Section 183 applies as if paragraphs (5) and (5A) were omitted.

Modification of section 186 (compensation for loss due to stop notice)

16. Section 186 applies as if—

(a) in subsection (1)—

(i) paragraph (a) were omitted;

(ii) in paragraph (b), the words “(otherwise than” to in “that paragraph)” were omitted;

(iii) in paragraph (c), the words “otherwise than in consequence” to “notice relates” were omitted;

(b) in subsection (3), for the words “within the prescribed time and in the prescribed manner” there were substituted “in accordance with regulation 12 of the Town and Country Planning General Regulations 1992(a)”.

Modification of section 188 (Register of enforcement and stop notices)

17. Section 188 applies to enforcement action taken under these Regulations as if the references in that section—

(a) to planning enforcement orders included a reference to planning enforcement orders issued under these Regulations;

(b) to enforcement notices included a reference to enforcement notices issued under these Regulations;

(a) S.I. 1992/1492. Regulation 12 was amended by S.I. 1996/525.

- (c) to stop notices included a reference to stop notices issued under these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations establish the Responsible Actors Scheme (“the scheme”) and the prohibitions under the Act. They identify certain developers who are eligible to become members of the scheme, and, as a condition of membership, require such developers to enter into and comply with a contract with the Secretary of State for Levelling Up, Housing and Communities under which they are to, among other things, remediate relevant residential buildings for which they are responsible at their own expense and reimburse to the government amounts paid out by government remediation funds to remediate buildings for which they are responsible.

Part 1 (regulations 1 to 4) contains introductory provisions.

Part 2, Chapter 1 (regulations 5 to 12) establishes the scheme, sets out the description of the persons who are eligible to become members of the scheme, and those who may choose to become members of the scheme.

Chapter 2 (regulations 13 to 20) makes provision for applications to join the scheme and for lists to be published by the Secretary of State. The Secretary of State is required to publish two lists: a list of the persons who are members of the scheme, and a list of those persons who, though eligible, are not members of the scheme, and the persons whom they control (“the prohibitions list”) (regulation 20).

Chapter 3 (regulations 21 to 23) sets out the conditions with which members of the scheme must comply and gives the Secretary of State power to require scheme members to produce certain information.

Chapter 4 (regulations 24 to 27) makes provision for the revocation of a member’s membership of the scheme and for a member’s membership to end where the member has fulfilled its obligations under the scheme.

Part 3 (regulations 28 to 42), with the Schedule to the regulations, set out the consequences which apply to those persons who are included on the prohibitions list. They are prohibited from carrying out major development in England (regulation 29), except for development for which planning permission has been granted before the regulations come into force (regulation 32). They are required to notify the relevant local authority of certain circumstances (regulation 30). Persons on the prohibitions list are also subject to the building control prohibitions set out in regulation 33. The effect of things done in contravention of the building control prohibitions (regulation 39) and the effect of the prohibitions on the validity of documents given or accepted in relation to building control before a person was prohibited is set out (regulation 40). Regulation 41 and the Schedule to the regulations modify Part 7 of the Town and Country Planning Act 1990 to take account of the prohibition on development provided for in these regulations. The prohibitions are subject to certain exceptions (regulations 31, 34, 35, 36, 37, 38 and 42).

Part 4 contains a review clause (regulation 43).

A copy of the International Accounting Standard 28 Investments in Associates and Joint Ventures the Financial Reporting Standard 102 and the Self Remediation Terms, which are referred to in these regulations, are available for inspection during office hours at the Department for Levelling Up, Housing and Communities Environment, 2 Marsham Street, London, SW1P 4DF. The Self Remediation Terms are also available at <https://www.gov.uk/government/publications/developer-remediation-contract>.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from www.legislation.gov.uk and from the Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.

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