

EXPLANATORY MEMORANDUM TO
THE BUILDING (APPROVED INSPECTORS ETC. AND REVIEW OF DECISIONS)
(ENGLAND) REGULATIONS 2023

2023 No. 906

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend the Building Regulations 2010 (the 2010 Regulations) related to the role of Approved Inspectors, to support the new higher-risk building control regime, and provide for the Building Safety Regulator to be the only building control authority for all higher-risk buildings. They also make consequential amendments to other regulations, and a number of general changes to strengthen the building control process.
- 2.2 This instrument is one of a package of statutory instruments laid by the Department for Levelling Up, Housing and Communities, to implement changes to the current building control system and deliver improvements across the entire built environment, as legislated for through the Building Safety Act 2022 (the 2022 Act), and the amendments made through that Act to the Building Act 1984.
- 2.3 The new regulatory regime will establish a regulated and unified building control profession improve standards, with a single set of rules to ensure uniformity in conduct and competence, and more stringent oversight provided by the building Safety Regulator.
- 2.4 These regulations address matters including the registration of building control approvers and building inspectors, review of decisions made by the Regulator in relation to registration, and measures introducing a requirement for additional information on the person carrying out work and the registered building control approver.
- 2.5 The regulations introduce a new definition (in relation to work by approved inspectors) of ‘commencement’ of work for existing and new buildings, and automatic lapse of building control approval for projects that do not meet this definition, strengthen the arrangements for the handover of fire safety information, and set out transitional arrangements for the procedural requirements for non-higher risk building work.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 1 of the 1984 Act enables building regulations to be made for England and Wales for a number of purposes with respect to the design and construction of buildings. Part 2 of the 1984 Act allows for approved inspectors to supervise building work instead of local authorities.

6.2 The 2022 Act establishes a new more stringent building safety regime for higher-risk buildings. Part 3 of the 2022 Act makes a number of amendments to the 1984 Act, including providing for the Regulator to be the only building control authority for higher-risk buildings in England. This statutory instrument in particular, makes amendments to the AI Regulations to support this change.

7. Policy background

What is being done and why?

7.1 The policy intent is to implement a change within the building control profession and to strengthen the building sector by raising competence levels and accountability. These regulations, support this aim and make the required amendments to the AI Regulations to implement the changes introduced through the 2022 Act. These regulations also make a number of procedural changes to ensure the building control process works as efficiently as possible, whilst facilitating robust oversight of building work.

7.2 The 2022 Act makes amendments to the 1984 Act to establish the registration process for registered building control approvers and registered building inspectors. The new registration system for registered building control approvers starts from 1 October 2023 and from 6 April 2024 it replaces the approval of approved inspectors under section 49 of the 1984 Act, currently operated on behalf of the Secretary of State by the Construction Industry Council Approved Inspectors Register (CICAIR). In April 2024 the CICAIR approval regime will cease to operate (allowing for a short period of transition) and under the new regime building control bodies will need to register with the Regulator as building control approvers. This instrument sets out the length of the registration period for registered building control approvers which will remain at five years, after which they will need to re-register.

7.3 The Regulations make amendments to the 1984 Act to also establish a registration process for individuals, who will for the first time be required to register as building inspectors with the Regulator. This instrument sets out the length of the registration period for building inspectors, which will be four years, after which they will need to re-register. Registered building inspectors will need to meet the registration requirements set by the Regulator, including the Code of Conduct and follow the Building Inspectors Competence Framework.

7.4 To improve oversight of higher-risk building work, only the Regulator will be able to act as the building control authority for higher-risk buildings. The changes that have been introduced to the system by the 2022 Act set out that all higher-risk building work

will fall under the supervision of the Regulator from October 2023 (with a short period of transition). This removes the ability for approved inspectors to oversee such projects. These regulations make a number of amendments to support the switch-off of dutyholder choice when the project includes higher-risk building work. The amendments made by these regulations support preventing an initial notice or amendment notice including higher-risk building work. The instrument provides for a new notice through which local authorities can alert approved inspectors, and the person intending to carry out the work, that the notice which purported to be an initial notice or amendment notice is invalid as the project includes higher-risk building work. Additionally, where work already has an initial notice, section 52A of the 1984 Act gives local authorities the power to cancel an initial notice where work currently supervised by an approved inspector becomes higher-risk building work. These regulations provide the forms to be used by local authorities, approved inspectors or developers to cancel an initial notice in such circumstances so that work on higher-risk buildings can immediately switch to the Regulator. This instrument makes amendments to various forms and certificates and also requires that the approved inspector confirms the work described in the initial notice etc is not higher-risk building work.

- 7.5 This instrument will introduce a new form for any rejection notice in relation to notices and certificates under part 2 of the 1984 Act. The new notice of rejection of an initial notice, amendment notice, plans certificate or final certificate will put this process on the same footing as the cancellation of these forms.
- 7.6 These regulations provide for a new notice of intention to start work to be sent by the person carrying out the work to their approved inspector, and a further notice to be sent when they are satisfied the work has met the new definition of commencement as set out in this instrument. The approved inspector may reject this notice if they are not satisfied the work has ‘commenced’ and there is a right of appeal to the First-tier Tribunal against a rejection.
- 7.7 Regulation 13 of this instrument amends the AI Regulations to strengthen fire safety information handover. This will include a new requirement in cases where regulation 38 of the Building Regulations 2010 applies to work for the approved inspector to confirm in a final certificate that the person carrying out the work has notified them that the fire safety information has been handed over, and a new ground for a local authority to reject a certificate where the confirmation is not provided in cases where it is required. The fire safety information is information relating to the design and construction of the building or extension, and the services, fittings and equipment provided in or in connection with the building or extension which will assist the responsible person to operate and maintain the building or extension with reasonable safety.
- 7.8 This instrument amends Schedule 2 of the AI Regulations to ensure local authorities have the power to reject initial notices that are not accompanied by a connectivity statement giving details of any public electronic communications network in relation to which a connection is to be provided, or an exemption if applicable. This is in line with the changes made to the forms as part of the gigabit broadband amendments made to the AI Regulations by the Building etc. (Amendment) (England) (No. 2) Regulations 2022, which provided for changes to the forms, in particular to require such a statement. This instrument introduces an amendment to the grounds for rejection so as to give local authorities the power to reject an initial notice which is not accompanied by that statement.

- 7.9 This instrument also amends the AI Regulations to change references to depositing plans, so they now refer to applications for building control approval - this is consequential on the 2022 Act repealing section 16 of the 1984 Act. The instrument makes a number of other improvements to how the system works. This includes changing the wording of an initial notice, and other relevant forms within Schedule 1 of the regulations, to include further detail in relation to the person carrying out the work. This change will increase clarity, accuracy and transparency within the system.
- 7.10 To deliver the needed fundamental reform of the wider building safety system and ensure that the new regulatory framework for higher-risk buildings operates effectively, those working on higher-risk buildings must be able to achieve and demonstrate a standard of competence relevant to their roles, and to provide confidence to dutyholders and regulators that they can do their job in a way that delivers safe, high-quality buildings. The new more stringent regulatory regime places legal responsibilities on those who commission building work and participate in the design and construction process. These people are called dutyholders and have responsibility for making sure that compliance with building regulations is considered at each stage of the design and construction process. Both private and public sector building control bodies need to play a part in ensuring enforcement of this.
- 7.11 The amendments to the Building Regulations 2010, in the Building Regulations etc. (Amendment) (England) Regulations 2023, prescribe competence requirements relating to any appointed person (the principal designer and principal contractor), and any prescribed person, in relation to any work or other matter to which building regulations are applicable. These regulations amend regulation 8 of the AI Regulations so that the new dutyholder and competence requirements in part 2A of the Building Regulations 2010 will apply to building work overseen by approved inspectors. The requirements set out a framework of duties for dutyholders (clients, contractors and designers), make clear who they are, and impose specific duties on them regarding the competence of anyone carrying out design or building work. Those dutyholders who appoint (clients, contractors and designers) must take reasonable steps to ensure they are competent to perform their functions in relation to the design and construction of buildings, including the additional requirements for those who undertake higher-risk building work.
- 7.12 The instrument inserts a requirement into the AI Regulations for the client to provide details of the principal contractor (sole contractor) and principal designer (or sole or lead designer) in relation to the work, and new details each time a new person is appointed to those roles. On completion of building work the client must give the approved inspectors compliance declarations from itself and the principal dutyholders in relation to the work. Equivalent provisions are set out for higher-risk building work in the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023.
- 7.13 For non-higher-risk building work that is not overseen by the Regulator, we expect local authority building control teams and approved inspectors to take a risk-based approach that is proportionate to the nature and scale of the project, and the level of risks involved. The expectation is for local authority building control and approved inspectors to hold dutyholders to account in delivering their duties and with regard to the competence requirements. To support the enforcement of these requirements we have amended regulation 18 of the AI Regulations, so that where an approved inspector considers any of the dutyholder and competence requirements have been breached, it must send a notice of contravention to the client explaining that if the breach is not remedied within a period set out in the notice the approved inspector will cancel the initial notice. These

requirements will apply from October 2023, with certain exceptions should building work have commenced by April 2024. These exceptions include work for which either an initial notice was given to and has been accepted, or deemed to be accepted, by a local authority before that date, full plans have been deposited with the local authority and have not been rejected, or a building notice has been given for work to which a Fire and Safety Order does not apply.

- 7.14 These Regulations also provide for access to justice, with a reviews and appeals process that is designed to be collaborative, fair and transparent where disputes arise over application or registration in regard to the building control profession. As part of the general regime changes, we have provided for appeals which previously were the responsibility of the Secretary of State to go to the Regulator and appeals which previously went to the Magistrates' court to go to the First Tier Tribunal, amending the procedures for these appeals as needed. This instrument provides at regulation 4 for reviews of Regulator decisions under part 2A (regulation of building control profession) of the 1984 Act. Similarly, it provides under regulation 5 for appeals in relation to reviewed decisions. It sets out, among other things, which Regulator decisions can be the subject of a review (such a decision can only be appealed to the First-tier Tribunal if a review is first carried out), the persons who can give notice to the Regulator requiring the review, the period of time in which the person must send that notice and by when the Regulator must notify the outcome of the review. It also sets out what must be contained in the notice sent to the Regulator requesting the review. This allows for appeals to the First-tier Tribunal against the decision of the Regulator.
- 7.15 Finally, the instrument sets out transitional provisions so that a number of the changes that are due to come into force in October 2023 will not apply to work where the initial notice was accepted before 1 October 2023 and will continue not to apply provided that the work is commenced before 1 April 2024.
- 7.16 These transitional provisions provide that where the same legal person who is an approved inspector also registers as a registered building control approver by 6 April 2024, then with effect from that date, any initial notices of the approved inspector will be treated as an initial notice of the registered building control approver. The transitional provisions further set out that where a person who is an approved inspector has not registered as a registered building control approver then that approved inspector's initial notices will cease automatically at midnight on 30 September 2024.
- 7.17 Together the transitional provisions set out the timescales within which certain tasks, such as an approved inspector registering as a registered building control approver, must be completed, as well as on which dates the initial notices are to cease to have effect if work is not commenced or work is not concluded. This is dependent on when the initial notice was accepted, when the work has commenced and finished, as well as whether the approved inspector has successfully registered as a registered building control approver. During the transitional period, approved inspectors will be able to continue with their non-higher-risk building work while they register as a registered building control approver. Alternatively, they will be able to complete their work during this period. Should this work not commence, or not be completed during this time, then the initial notice will automatically be cancelled at the end of the particular transitional period. Where higher-risk building work is described in an initial notice, the transitional and, saving provisions in the Building (Higher-Risk Building Procedures) (England) Regulations 2023 will apply.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the AI Regulations as it is to be revoked next year.

10. Consultation outcome

10.1 The Department conducted a public consultation on proposed changes to the building control profession and the building control process for approved inspectors (in future to be known as registered building control approvers). The duration was from 31 January 2023 until 14 March 2023. This consultation sought views on the proposals that have been included in this instrument.

10.2 There were 113 responses to the consultation and broad agreement with the policy as it has been proposed. Some respondents highlighted their concerns with specific policy, such as the proposed registration length for building inspectors. Where necessary, a decision has been made taking into consideration operational matters as well as feedback provided in response to the consultation.

10.3 The consultation also included questions on other aspects of the new registration process, as well as on restricted activities and functions, cancellation of initial notices and further amendments to the AI Regulations.

10.4 We have used this data to inform our policy making for this statutory instrument.

10.5 A full consultation response has been prepared and published at the same time as this memorandum.¹

10.6 The Department has conducted further consultation in the form of extensive stakeholder engagement with those who would be affected by the proposed changes, including the Regulator, local authorities, approved inspectors, trade bodies and representatives in the construction sector.

11. Guidance

11.1 The Regulator will produce guidance on relevant provisions included within this statutory instrument.

12. Impact

12.1 A full impact assessment has been prepared for this instrument setting out the impact on business and the public sector and published alongside this Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

12.2 These Regulations will have an impact on approved inspectors, and local authority building control inspectors as a result of the requirement to register with the Building Safety Register.

12.3 They will also have an impact on dutyholders (clients, principal contractors, contractors, principal designers and designers), as they make clear who these

¹ Consultations on the changes to the building control profession and the building control process for approved inspectors

dutyholders are and impose specific duties on them, including regarding the competence of anyone carrying out design or building work.

- 12.4 No wider impacts are expected to affect those with protected characteristics, the environment, or businesses.

13. Regulating small business

- 13.1 Small business will be equally subject to the requirements placed on all building control bodies, because of the need to ensure equal standards of competence and conduct.
- 13.2 This policy will have an impact on approved inspectors and on prospective registered building control approvers due to the requirement to register with the Regulator. Approved inspectors will need to register as building control approvers with the Regulator, as opposed to CICAIR, to continue to operate. Prospective registered building control approvers will also need to register with the Regulator to enter the market. Both will need to familiarise themselves with, and meet, the Regulator's requirements for registration, and subsequent auditing, including with regard to competence.
- 13.3 Out of the 84 approved inspectors in 2021, approximately 83% of these businesses were considered micro (27) or small (43) and the majority of activities resulting from the new regime will fall to such businesses. This could impact the number of small and micro businesses continuing to operate as building control approvers in the market. However, any exemption for small or micro businesses would mean an unacceptable dilution of the competence necessary for a building control body to operate effectively.
- 13.4 There will be an impact relating to the requirement for individual building control professionals, both existing and prospective, to register as building inspectors with the Regulator and the need to familiarise themselves with the procedural changes to the building control process introduced by these Regulations. Existing building control professionals, both public and private, will need to register with the Regulator to operate as registered building inspectors and prospective building inspectors will need to register to enter the market. Both will need to familiarise themselves with, and meet, the Regulator's requirements for registration, and subsequent auditing, including with regard to competence. They will also need to familiarise themselves with the procedural changes to the building control process introduced by these regulations.
- 13.5 Individuals working in small businesses, or as sole traders, may face a comparatively higher implications in registering with Regulator and meeting their requirements to do so, particularly with regard to familiarising themselves with procedural changes introduced by these regulations. This could impact the number of small and micro businesses (including sole traders) continuing to operate as registered building control approvers in the market. However, any exemption for small or micro businesses (including sole traders) would mean an unacceptable dilution of the competence necessary for building inspectors and building control bodies to operate effectively.
- 13.6 The fees and charges schedule for the registration of registered building control approvers and building inspectors will be set out by the Regulator in due course.
- 13.7 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to be clear about the requirements and take into consideration feedback from the industry.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of section 31 of the Small Business, Enterprise and Employment Act 2015 Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley MP, has made the following statement:

“The regulatory measures in this instrument are within the scope of the periodic review provided for in section 162 of the Building Safety Act 2022, and it would not be appropriate in the circumstances to make provision for a separate review in this instrument”.

15. Contact

- 15.1 Marta Musolino at the Department for Levelling Up, Housing and Communities marta.musolino@levellingup.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Camilla Sheldon, Deputy Director for Regulatory Stewardship and Reform, at the Department for Levelling Up, Housing and Communities can confirm that this explanatory memorandum meets the required standard.
- 15.3 Parliamentary Under Secretary of State Lee Rowley at the Department for Levelling Up, Housing and Communities can confirm that this explanatory memorandum meets the required standard.