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STATUTORY INSTRUMENTS

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**2023 No. 909**

**The Building (Higher-Risk Buildings  
Procedures) (England) Regulations 2023**

**PART 6**

**Inspections etc, regularisation, review of  
decisions, appeals and section 30A procedures etc**

**Inspections etc**

**46.** In relation to any building or proposed building for which the regulator is the building control authority, the regulator may take such steps as it considers appropriate to check compliance with all applicable requirements of the building regulations, including—

- (a) requiring information;
- (b) requiring the laying open of building work for inspection by the regulator;
- (c) requiring an inspection to be undertaken and the record of the inspection provided.

**Regularisation of unauthorised building work**

**47.—(1)** This regulation applies where it appears to the regulator that unauthorised building work has been carried out on or after 11th November 1985.

(2) Where this regulation applies, the owner (in this regulation referred to as “the applicant”) may make an application in writing to the regulator in relation to the unauthorised building work (“regularisation certificate application”).

(3) No regularisation certificate application may be made where unauthorised building work is a major change.

(4) The regularisation certificate application must be accompanied by—

- (a) a statement that the application is made in accordance with this regulation,
- (b) a description of the unauthorised building work,
- (c) a plan of the unauthorised building work,
- (d) where the application is made by someone on behalf of the owner, a statement signed by the owner confirming they agree to the application being made and that the information contained in the application is correct.

(5) Where the regulator receives a regularisation certificate application, it may require the applicant to take such steps as the regulator thinks appropriate for the regulator to ascertain whether additional building work may be required in order for the unauthorised building work to secure compliance with all applicable requirements of the building regulations.

(6) Where the regulator is satisfied that additional building work is required to secure that the unauthorised building work satisfies the applicable requirements (taking account of any dispensation or relaxation given in accordance with sections 8 and 9 of, and Schedule 2 to, the 1984 Act) then the

regulator must reject the application and accordingly an application for building control approval must be made in relation to the additional building work.

- (7) Where the regulator is satisfied, after taking all reasonable steps for that purpose that—
- (a) the applicable requirements of the building regulations have been satisfied (taking account of any work carried out and any dispensation or relaxation given in accordance with sections 8 and 9 of, and Schedule 2 to, the 1984 Act), and
  - (b) no additional building work is required to secure that the unauthorised building work satisfies the applicable requirements (taking account of any such dispensation or relaxation),

the regulator may give a certificate to that effect (in this regulation referred to as “a regularisation certificate”).

(8) A regularisation certificate is evidence (but not conclusive evidence) that the applicable requirements of the building regulations specified in the certificate have been complied with in relation to the work specified in the certificate.

(9) Where a regularisation certificate is granted in relation to building work, Parts 2 to 5 of these Regulations cease to apply to that work.

(10) Subject to paragraph (12), where a regularisation certificate is granted the applicant must, no later than five days after the certificate has been received, give the building work information and a copy of the certificate to—

- (a) the accountable person who is responsible for the part of the building in relation to which the work described in the certificate relates, and
- (b) the responsible person, if any, for the part of the building in relation to which the work described in the certificate relates.

(11) For the purposes of paragraph (10) the “building work information” is—

- (a) where Part B of Schedule 1 to the 2010 Regulations imposes a requirement in relation to the unauthorised building work, information relating to—
  - (i) the design and construction of the building and the services, fittings and equipment provided in or in connection with the building;
  - (ii) the design of the change of use and building work to implement it;
  - (iii) the composition of materials used,

which will assist the responsible person to operate and maintain the building with reasonable safety;

- (b) where paragraph F1(1) of Schedule 1 to the 2010 Regulations imposes a requirement in relation to the unauthorised building work, sufficient information about the building’s ventilation system and its maintenance requirements so that the ventilation system can be operated in such a manner as to provide adequate means of ventilation;
- (c) where paragraph L1 of Schedule 1 to the 2010 Regulations imposes a requirement in relation to the unauthorised building work, sufficient information about the building, the fixed building services and their maintenance requirements so that the building can be operated in such a manner as to use no more fuel and power than is reasonable in the circumstances;
- (d) where paragraph L2 of Schedule 1 to the 2010 Regulations applies in relation to the unauthorised building work, sufficient information about the system for on-site electricity generation in respect of its operation and maintenance requirements so that the system may be operated and maintained in such a manner as to produce the maximum electricity that is reasonable in the circumstances and delivers this electricity to the optimal place for use;

- (e) where Part O of Schedule 1 to the 2010 Regulations applies in relation to the unauthorised building work, sufficient information about the provision made in accordance with Part O so that the systems in place further to Part O can be operated in such a manner as to protect against overheating.
- (12) Paragraph (10) does not apply where the applicant is a domestic client.
- (13) In this regulation—
  - “responsible person” has the meaning given in article 3 of the Regulatory Reform (Fire Safety) Order 2005;
  - “unauthorised building work” means any building work in relation to a higher-risk building which is carried out without—
    - (a) a building control approval under regulation 7 (building control approval applications for HRB work or stage of HRB work: decisions) or 15 (building control approval applications for work to existing HRB: decisions) being granted by the regulator;
    - (b) where the building work is a major change, a building control approval under regulation 24 (change control applications: decisions);
    - (c) where the building work is a notifiable change, a notification under regulation 18(3) (change control),but work is not unauthorised building work to the extent that it consists only of scheme work or exempt work.

### **Review of regulator’s decisions**

**48.**—(1) The following decisions of the regulator are prescribed for the purposes of section 25(1) of the 2022 Act—

- (a) a decision to reject—
  - (i) a building control approval application for HRB work;
  - (ii) a building control approval application for a stage of HRB work;
  - (iii) a building control approval application for work to existing HRB;
  - (iv) a change control application;
  - (v) a completion certificate application;
  - (vi) a partial completion certificate application;
  - (vii) a regularisation certificate application;
- (b) a decision to specify a controlled change as being a major change or a notifiable change under regulation 25 (change control: regulator power to specify notifiable changes and major changes);
- (c) a decision to refuse a request to vary a requirement under regulation 30 (a variation of a requirement imposed on a building control approval).

(2) The persons prescribed for the purposes of section 25(2) of the 2022 Act in relation to the decisions referred to in paragraph (1) are—

- (a) in relation to a decision referred to in paragraph (1)(a), the person who made the application or the person on whose behalf the application was made;
- (b) in relation to a decision referred to in paragraph (1)(b), any person to whom the regulator gives notice under regulation 25 (change control: regulator power to specify notifiable changes and major changes);
- (c) in relation to a decision referred to in paragraph (1)(c), the client who made the request.

(3) For the purposes of section 25 of the 2022 Act, a person requiring the regulator to carry out a review, or a person on their behalf, must give a notice under section 25(2) of the 2022 Act to the regulator in writing within 21 relevant days beginning with the day after the day on which the decision referred to in paragraph (1) is notified to the person.

(4) A notice under section 25(2) of the 2022 Act must contain the following information—

- (a) the name, address, telephone number and (if available) email address for the person giving the notice;
- (b) if the person giving the notice is doing so on behalf of a person who falls within the description in paragraph (2), the name and address of that person and a statement that the person giving the notice is authorised to give the notice on behalf of that person;
- (c) the address and, if applicable, the name of the building to which the decision referred to in paragraph (1) relates;
- (d) a statement of the review being sought which—
  - (i) identifies the decision to be reviewed (including the date of the decision and any reference number included on the decision), and
  - (ii) sets out the reasons the person considers the decision should be reviewed;
- (e) any information that is available to the person giving the notice, that may have been relevant to the regulator's original decision but was not available at the time the original decision was made.

(5) The regulator must notify the person who required a review of the outcome of the review within 13 weeks beginning with the day after the day on which the person gives a notice under section 25(2) of the 2022 Act.

(6) A notice that the review has upheld the decision must give the reasons for that decision.

(7) If the review varies the decision the regulator must issue a new decision.

(8) If requested by the person requiring the review, the regulator must provide a paper copy of the decision of the review.

### **Appeal in relation to reviewed decisions**

**49.**—(1) A person may appeal to the First-tier Tribunal against the decision of the regulator of a kind referred to in regulation 48(1) (review of regulator's decisions) provided that the appeal is made within 21 relevant days beginning with the day after the day on which the regulator notifies the person of its decision under regulation 48(5)(1).

(2) The First-tier Tribunal may allow an appeal under paragraph (1) only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) that the decision was made without following the procedures set out in the 1984 Act or regulations made under that Act.

(3) If the First-tier Tribunal allows an appeal it may quash or vary the decision.

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(1) Section 26 of the Building Safety Act 2022 provides a decision must be reviewed under section 25 before an appeal is made.

### **Section 30A prescribed applications**

**50.**—(1) The following applications are prescribed<sup>(2)</sup> for the purposes of section 30A(1) of the 1984 Act, and are accordingly applications that may be determined by the Secretary of State in the circumstances described in that section—

- (a) a building control approval application for HRB work;
- (b) a building control approval application for a stage of HRB work;
- (c) a building control approval application for work to existing HRB;
- (d) a change control application;
- (e) a completion certificate application;
- (f) a partial completion certificate application.

(2) An application may not be made to the Secretary of State under section 30A of the 1984 Act where, in relation to the original application<sup>(3)</sup>, the regulator has notified the person who made the original application that the original application is not valid.

### **Section 30A applications: procedure**

**51.**—(1) An application under section 30A of the 1984 Act (“section 30A application”) must be made in writing to the Secretary of State by the client for the work to which the original application relates (in this Part “the applicant”) on a form published by the Secretary of State, together with the documents specified in paragraph (3).

(2) A section 30A application must be made no later than 6 weeks after the day the relevant period<sup>(4)</sup> in relation to the application or request ends.

(3) The documents mentioned in paragraph (1) are—

- (a) a copy of the original application given to the regulator (including all documentation that accompanied the application);
- (b) all information provided to the regulator in relation to the original application by the applicant;
- (c) all correspondence between the applicant and the regulator in relation to that application;
- (d) a copy of the notice sent to the regulator under paragraph (4);
- (e) where the application is made by someone on behalf of the client, a statement signed by the client confirming they agree to the application being made and that the information contained in the application is correct.

(4) At least two working days before submitting the application under paragraph (1) the applicant must give notice to the regulator of their intention to do so.

### **Section 30A applications: electronic submissions**

**52.**—(1) Where an applicant submits a section 30A application through electronic facilities provided by the Secretary of State for that purpose, they are taken to have consented to the use of electronic communications for all purposes relating to the section 30A application that are capable of being carried out electronically.

(2) The deemed consent in paragraph (1) may be revoked by the applicant giving the Secretary of State two weeks’ notice in writing specifying that the notice is given under this regulation.

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(2) See section 126 of the Building Act 1984 for the meaning of “prescribed”.

(3) See section 30A(1) of the Building Act 1984 for the definition of “the original application”.

(4) See section 30A(9) of the Building Act 1984 (c. 55) for the definition of “relevant period”.

### **Section 30A applications: determinations**

**53.**—(1) A section 30A application is to be determined<sup>(5)</sup> by written representations.

(2) The Secretary of State must give the regulator the opportunity to make written representations in relation to a section 30A application.

(3) The Secretary of State may give any other person an opportunity to make written representations in relation to a section 30A application.

(4) The Secretary of State may, by notice in writing, require the regulator to provide specified information, or provide copies of specified documents, by the date specified in the notice (that date must be no fewer than 14 relevant days after the date the notice is given).

(5) Before determining a section 30A application, the Secretary of State may hold such meetings with the applicant, the regulator or any other person, and undertake such visits, testing or inspections, as the Secretary of State considers appropriate.

(6) The Secretary of State’s decision must be given in writing to the applicant (and where the applicant is not the client, also give a copy of the decision to the client).

(7) A copy of the Secretary of State’s decision must be sent to the regulator.

### **Section 30A applications: appointed persons**

**54.**—(1) The Secretary of State may appoint a person to determine a section 30A application instead of the Secretary of State.

(2) At any time before a person appointed under this regulation has determined the application the Secretary of State may—

(a) revoke that person’s appointment;

(b) appoint another person to determine the application instead.

(3) Where a new appointment is made the consideration of the application in question must be started afresh.

(4) Nothing in paragraph (3) requires any person to be given an opportunity to make fresh representations or modify or withdraw representations previously made.

(5) A person appointed under this regulation has the same powers and duties in relation to determination of a section 30A application as the Secretary of State and, in particular, regulation 53 (section 30A applications: determinations) applies as if references to the Secretary of State in that regulation were references to that person.

(6) Where an application is determined by a person appointed under this regulation their decision is to be treated as the decision of the Secretary of State.

### **Deemed rejection of the original application**

**55.** Where, in relation to an application that is prescribed in regulation 50 (section 30A prescribed applications)—

(a) the period under regulation 51 (section 30A applications: procedures) for a person to make a section 30A application has expired without the person making a section 30A application in accordance with that regulation, and

(b) the regulator did not determine the original application<sup>(6)</sup> before the expiry of that period,

then the original application is treated as rejected by the regulator.

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(5) Section 30A(7) provides that for the purpose of determining a section 30A application the Building Act 1984 and the building regulations (including these Regulations) apply in relation to the Secretary of State as they apply to the regulator.

(6) See section 30A(1) of the Building Act 1984 for the definition of “the original application”.

### **Section 30A applications: appeals**

**56.**—(1) An appeal to the First-tier Tribunal under section 30A(8) of the 1984 Act must be made within 21 relevant days beginning with the day after the day on which the Secretary of State gives the decision to the applicant under regulation 53(6) (section 30A applications: determinations).

(2) The First-tier Tribunal may allow an appeal under paragraph (1) only to if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable;
  - (d) that the decision was made without following the procedures set out in the 1984 Act or regulations made under that Act.
- (3) If the First-tier Tribunal allows an appeal it may quash or vary the decision.