

EXPLANATORY MEMORANDUM TO
THE BUILDING (HIGHER-RISK BUILDINGS PROCEDURES) (ENGLAND)
REGULATIONS 2023

2023 No. 909

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 The purpose of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 is to support the new higher-risk building control regime. The amendments made to the Building Act 1984 (the 1984 Act) by amendments in the Building Safety Act (the 2022 Act) provide for the Building Safety Regulator (the Regulator) to be the building control authority for all higher-risk buildings. This instrument provides the detail of the building control regime for higher-risk buildings. This instrument specifies the procedural building regulation requirements when a new higher-risk building is being designed and constructed or when building work is being done to an existing higher-risk building (collectively known as higher-risk building work).
- 2.2 The instrument also contains a number of consequential amendments.
- 2.3 This instrument is one of a package of statutory instruments laid by the Department for Levelling Up, Housing and Communities, which will facilitate the implementation of changes to the current building control system and deliver improvements across the entire built environment.

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 jurisdiction(s) 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, building work and the services, fittings and equipment provided in or in connection with buildings. These purposes include securing the health, safety, welfare and convenience of persons in and about buildings.

- 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.
- 6.3 This instrument is one of a series of statutory instruments being laid by the Department for Levelling Up, Housing and Communities which will facilitate the implementation of changes to the current building control system, implement the higher-risk building regime and deliver improvements across the entire built environment. The other instruments include the Building Regulations etc. (Amendment) (England) Regulations 2023 and the Building (Approved Inspectors etc. and Review of Decisions) Regulations 2023.
- 6.4 Higher-risk buildings are defined in section 120D the 1984 Act and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023.
- 6.5 The Building Regulations etc. (Amendment) (England) Regulations 2023 which are being laid on the same day amend the Building Regulations 2010 and introduce new duties that will apply to all building work. This includes new dutyholder requirements and appeal processes.
- 6.6 This instrument complements the other regulations and specify the procedures of the higher-risk building control regime. They also build on The Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021. This requires those involved in developing higher-risk building to produce a fire statement and consult the Regulator on it before planning approval is considered.
- 6.7 This instrument also makes a number of consequential amendments to the Regulatory Reform (Fire Safety) Order 2005, the Community Infrastructure Levy Regulations 2010 and the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023.
- 6.8 The provisions in this instrument are made using powers in the 1984 Act and the 2022 Act.

7. Policy background

What is being done and why?

- 7.1 The 2022 Act establishes a new more stringent building safety regime for higher-risk buildings as part of the new approach to managing fire and structural safety risks in these buildings, and delivers on key aspects of Dame Judith Hackitt's recommendations, as set out in her Building a Safer Future Report, following her Independent Review of Building Regulations and Fire Safety¹, commissioned by government after the Grenfell Tower fire.
- 7.2 Dame Judith identified that the regulatory system covering high-rise and complex buildings was not fit for purpose. As part of her review, she found flaws in the

¹ [Building a Safer Future - Independent Review of Building Regulations and Fire Safety: Final Report](#)

current rules and processes that oversee building work. There were four particular issues the report found.

- 7.3 Ignorance. Regulations and guidance were not read by those who need to, and guidance was being misunderstood and/or misinterpreted.
- 7.4 Indifference. The primary motivation was to do things as quickly and cheaply as possible rather than to deliver quality safe homes. Any concerns raised were often ignored.
- 7.5 A lack of clarity on roles and responsibilities. Ambiguity over where responsibility lies, exacerbated by a level of fragmentation within the industry, and precluding robust ownership of accountability.
- 7.6 Inadequate regulatory oversight and enforcement tools. Where enforcement was necessary, it was often not pursued. Where it was pursued, the penalties were so small as to be an ineffective deterrent.
- 7.7 The report recommendations proposed a new regulatory framework to drive fundamental culture change. The government committed to implementing the recommendations in the report through the 2022 Act and associated secondary legislation.
- 7.8 The 2022 Act amends the 1984 Act to provide the legal powers to establish the new regulatory framework for a more stringent regulatory regime in design and construction. The 2022 Act also established a new national Regulator, in England, to administer and enforce the new regime to drive up the safety and standards. This instrument is part of these reforms and, alongside the commencement of the relevant provisions of the 1984 Act, the 2022 Act and the Building Regulations etc. (Amendment) (England) Regulations 2023 and the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023, introduce the new building control regime for higher-risk buildings.
- 7.9 The provisions in this instrument apply to higher-risk buildings. Under the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, “where two or more structures are attached that set of structures are a “building”” when a new higher-risk building is being constructed. For the building control regime, a higher-risk building is defined as buildings with at least 2 residential units, care homes and hospitals at least 18 metres in height or at least seven storeys (there are a number of exceptions for military barracks, hotels etc.).
- 7.10 The intention of the new regime is to drive a change in culture where those involved in a higher-risk building work are accountable for their work. Those involved in building work must now demonstrate to the new Regulator how the work complies with building regulation requirements. Compliance with building regulations should be considered holistically, including when changes are made during the build phase, and records maintained demonstrating this compliance. Overall, the outcome of these regulatory changes is to provide greater reassurance for those who will occupy and use these buildings that they are safe.
- 7.11 Regulation 1 of the instrument sets out the commencement, citations etc and regulation 2 sets out a number of new definitions.
- 7.12 The terms “HRB work” and “work to existing HRB” are also used in this section and are defined in regulation 2. Collectively they cover all types of higher-risk building work. “HRB work” is building work which creates a new higher-risk building, either

through constructing a new building or adding storeys or changing the use of an existing building to make it a higher-risk building. “Work to an existing HRB” is any other building work to an existing higher-risk building which is not already covered by “HRB work”.

- 7.13 The term dutyholder is used in this explanatory memorandum. The duties associated with each dutyholder are defined in the Building Regulations etc. (Amendment) (England) Regulations 2023. Each person who commissions, designs or undertakes building work will be a dutyholder and will have specific duties. The principal dutyholders are the client, principal designer and principal contractor. They will be supported by other dutyholders known as designers and contractors.

New higher-risk buildings: building control approval to start building work

- 7.14 The new building control process for higher-risk buildings will require an application to be submitted to, and approved by, the Regulator before any work starts. Also known as gateway 2, this requirement to obtain approval replaces the current ‘deposit of full plans’ stage under the Building Regulations 2010. The process for applying for building control approval and the Regulator considering the application is set out in regulations 3 to 8.

Building control approval for HRB work or stage of HRB work

- 7.15 Regulation 3 sets out that before building work, or a stage of building work, can begin on a higher-risk building, an application must be submitted to, and approved by, the Regulator. This introduces a new “hard stop”. Where any requirements placed on the application by the Regulator that must be fulfilled before any building work can start and must be fulfilled prior to the work starting.
- 7.16 Regulation 3(d) also stipulates that the Regulator must be notified of the date the work will start prior to that date, as set out in regulation 9 below.

Building control approval applications for HRB work or stage of HRB work

- 7.17 Regulation 4 sets out the requirements of a building control approval application. This application is required for the creation of a new higher-risk building, a stage of work in the development of a new higher-risk building, and where an existing building will become a higher-risk building following the work. A stage of work is a stage of construction on an individual higher-risk building.
- 7.18 Regulation 4(1) sets out that the application must include contact details of the client, principal contractor and principal designer. It must also include statements confirming the application is made under this regulation and when the proposed work is regarded as commenced in accordance with regulation 46A of the amended Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023). Under regulation 4(2)(c) where the application is made on behalf of someone other than the client, a statement is needed from the client confirming that the information submitted on their behalf is correct.
- 7.19 Where the application relates to an existing building that will become a higher-risk building following the work, the application must provide details of the existing building. The information provided must cover the building’s current use across all storeys, as well as the height and number of storeys.
- 7.20 Regulation 4(1) also sets out that the application must describe the proposed work, including the height, number of storeys, proposed use of each storey, number of

residential rooms and commercial units, and drainage provisions for the building. The application must also outline when during the build phase the client expects to have met the legal definition and requirement of commencement of work.

- 7.21 Regulation 4(2) requires that an application must include plans showing the size of the building, boundaries of its curtilage, the size and position of all other buildings within the curtilage, and its position in relation to adjoining boundaries, as well as the width and position of any streets within the boundaries or curtilage. It lists the prescribed documents which must accompany the application. It also sets out that any other plans that demonstrate that the work would comply with all relevant building regulations requirements must be provided.
- 7.22 Regulation 4(3) requires that an application for a stage of HRB work must include all the information set out in regulation 4(1). Where the application relates to the first stage of work, the regulation requires the inclusion of a statement detailing the work to be undertaken in the first stage, and all the subsequent stages with estimations on when each stage is expected to start. Where an application relates to a stage of HRB work, the documents in regulation 2 should be modified to demonstrate how the first stage of work will comply with all applicable building regulations and a summary of the plans for the next stages. In particular, modified plans required in regulation 4(2)(b)(i) showing how the work to be undertaken in the stage would comply with the building regulations requirements must be submitted and modifications to the compliance statement required in regulation 4(2)(b)(vi).
- 7.23 Where the application relates to a stage of work after the first stage, it must be accompanied by a similar statement setting out details of the stage of work to which the application relates, estimates for the start date of the remaining stages and plans showing how the work will comply with the requirements of the building regulations. These will be subject to the similar modifications as mentioned above for the first stage of work.

Building control approval applications for HRB work or stage of HRB work: validity and time limit

- 7.24 Regulation 5 specifies the process the Regulator will take to validate a building control approval application for a HRB work or a stage of HRB work and the length of time it has to make a decision. This is necessary to support a straightforward and seamless process for assessing applications for building control approval given the new “hard stop” imposed. This requires dutyholders to have received approval on the application before building work can start.
- 7.25 Regulation 5(3) defines a “valid application” as an application that fulfils the information requirements in regulation 4. Regulation 5(1) requires the Regulator, on receipt of a valid building control approval application, to notify the applicant and determine the application within 12 weeks beginning with the date the application is received. This period can be extended under regulation 5(1)(b) should the Regulator and applicant agree an extension to the 12-week statutory time limit.
- 7.26 Within that 12-week period to determine the application, no statutory time limit is imposed on the Regulator to validate an application. However, the application must be both validated and determined within the 12-week period.
- 7.27 Section 16 of the 1984 Act, which sets a five-week determination period for deposited plans, is repealed by the 2022 Act.

- 7.28 Regulation 5(2) requires the Regulator on receipt of an invalid building control approval application to notify the applicant and provide a reason for its invalidity. Where the applicant is not the client, the Regulator must give a copy of the notice informing the applicant of the decision to the client.

Building control approval applications for HRB work or stage of HRB work: consultation

- 7.29 Regulation 6 sets out the statutory consultation process in relation to a building control approval application for a proposed higher-risk building. This requirement is modelled upon the current statutory consultation process requirements in the Building Regulation 2010 and applies them to higher-risk buildings.
- 7.30 Regulation 6(1) prescribes that a consultation between the Regulator and the relevant enforcing authorities for the Regulatory Reform (Fire Safety) Order 2005 (Fire Safety Order) must take place before a building control approval application is determined. The relevant enforcing authority for the higher-risk regime is the fire and rescue authority for the area in which the proposed higher-risk building is to be constructed.
- 7.31 The regulation largely replicates the current requirements of article 45 of the Fire Safety Order. Article 45 is revoked by the 2022 Act. Moving the consultation on the plans for building work into building regulations will make the legislative framework clearer.
- 7.32 Regulations 6(2) and (3) prescribe that in consulting the enforcing authorities under the Fire Safety Order, the Regulator will need to provide sufficient plans to show where the proposed higher-risk building work complies with the applicable requirements of part B of schedule 1 to the Building Regulations 2010 (fire safety requirements) and how they are going to manage the building during occupation taking into account the Order requirements. Regulation 6(3) requires the Regulator to provide the enforcing authority with the fire and emergency file as this contains relevant information with regard to dutyholder consideration of fire and structural safety. The fire and emergency file is described in paragraph 5 of schedule 1 of this instrument.
- 7.33 Regulation 6(1) also provides for consultation between the Regulator and the sewerage undertaker before a building control approval application is determined where paragraph H4 of schedule 1 to the Building Regulations 2010 (building over sewers requirements) imposes requirements in relation to the proposed higher-risk building. Regulation 6(2) sets out that the Regulator must provide sufficient plans to show how the proposed higher-risk building, if carried out in accordance with those plans, will comply with the necessary requirements. The regulation aligns with what is currently required under regulation 15 of the Building Regulations 2010 for all building work to ensure sufficient consistency across all buildings and building regulations.
- 7.34 Regulation 6(2)(b) also requires the Regulator to wait 15 working days from starting the consultation with enforcing authorities or sewerage undertakers before determining a building control approval application but may agree an extension to this timeframe with statutory consultees. The time period aligns to the current requirements for statutory consultation in the Building Regulations 2010.
- 7.35 Regulation 6(4) sets out that if all the consultees have responded with their views before the end of the 15 working day period, then the Regulator can proceed to determine the application the day after the views have been received. Furthermore,

regulation 6(5) prescribes that the Regulator is not required to consult statutory consultees where there are already grounds to reject the application.

Building control approval applications for HRB work or stage of HRB work: decisions

- 7.36 Regulation 7 sets out the circumstances in which a building control approval application for HRB work or a stage of HRB work is decided by the Regulator. Regulation 7(1) stipulates that the Regulator must approve an application unless the application does not comply with the requirements of regulation 4, does not provide sufficient detail to show whether relevant building regulations requirements would be contravened, shows that the proposed work would contravene a relevant requirement, or shows that the strategies, policies and procedures in place are insufficient to ensure compliance with relevant requirements.
- 7.37 Regulation 7(2) provides that where one or more of the reasons in regulation 7(1) applies the Regulator may either reject the application or, with the agreement of the applicant, approve it subject to requirements.
- 7.38 The types of requirements the Regulator may agree with the applicant are detailed in regulation 7(3), namely it can require a specific plan or document, or revised version of either, be provided by a certain time, or require that work cannot proceed beyond a certain point until a specific plan or document, or revised version of either, have been provided to and approved by the Regulator.
- 7.39 As set out in regulation 5, the Regulator must determine the outcome of an application within 12 weeks. Under regulation 7(4) the Regulator must notify the applicant, and the client where the applicant is not the client, of the decision. If the application is rejected, under regulation 7(5) the Regulator must provide reasons for the rejection.
- 7.40 Regulation 7(6) sets out that where an application has been approved subject to requirements, the notice of approval must specify the requirement(s) imposed.
- 7.41 Where an application is successful, regulation 7(8) outlines that it has the effect of building control approval for the work, or stage of work, being granted and the description of the work, plans, and accompanying documents are approved.
- 7.42 In accordance with regulation 7(9) to (12) where the approval is subject to a requirement for a specified plan or document to be revised, the unrevised document is not to be considered as approved. Once a document or plan has been revised according to the requirement, and subsequently approved by the Regulator, it is considered to have been approved from the date approval is given by the Regulator.
- 7.43 Where a requirement details that a specific plan or document must be revised and approved by the Regulator before work can be carried out, the client is responsible for ensuring no work is carried out until the approval is given.
- 7.44 Where a requirement sets out that work cannot progress beyond a specified point, the requirement must detail the points in relation to the work and the plans or documents that must be approved to move beyond each point. The client is responsible for ensuring that work does not progress beyond the specified point without approval.
- 7.45 If requested, under regulation 7(14) the Regulator must provide reasons if it does not approve a plan or document required to progress work beyond the specified point.
- 7.46 Regulation 7(7) and 7(13) require the Regulator, if requested, to provide a paper copy of the approval.

Regulator's power to require notifications etc for HRB work or stage of HRB work

- 7.47 Regulation 8 provides that the Regulator may, by written notice, require the client to notify them, within a specified period, when a specified point of work, or stage of work, has been reached or not to cover up specified work within a specified period.

Notice before starting on site and further notice when work is "commenced"

- 7.48 Regulation 9 is based on the requirement to submit a commencement notice to the building control authority in regulation 16(1) of the Building Regulations 2010. Regulation 9 places a requirement on the client to notify the Regulator twice, first when work starts on site and then again when work is regarded as "commenced". Regulation 16(1) of the Building Regulations 2010 is disapplied to higher-risk buildings through regulation 4 of the Building Regulations etc. (Amendment) (England) Regulations 2023.
- 7.49 Regulation 9 (2) requires the client at least five working days before starting higher-risk building work on site, to notify the Regulator of their intention to start work and the date on which the work is to start. The requirement will provide the Regulator with sufficient forewarning before the construction phase begins.
- 7.50 Regulation 9(3) provides that within five working days of the building work being regarded as "commenced", the client, or someone on their behalf, must notify the Regulator of this fact. This notice is linked to the new provisions inserted in section 32 of the 1984 Act on lapse of building control approval.
- 7.51 Section 36 of the 2022 Act amended section 32 of the 1984 Act and provided for building control approvals to lapse automatically after three years in respect of each building in which work has not commenced. The government is using the power in section 32(6) of the 1984 Act to define what is to be regarded as "commenced" for this purpose. The new notices under regulation 9(3) enables the Regulator to monitor whether or not work is to be regarded as commenced.
- 7.52 Regulation 9(11) provides that the definition of "commenced" in regulation 46A (Lapse of building control approval: commencement of work) in the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2010) is to apply. In particular, a construction of a higher-risk building will in many cases be considered a "complex building" under regulation 46A. For the construction of a "complex building" commencement is defined as the completion of the foundations and the structure of the lowest floor level above the foundations for the proposed higher-risk building or the first stage of the higher-risk building, if carried out in stages. Under regulation 46A(5), a "complex building" means a building constructed on the same shared foundation plinth or podium as any other building or structure; a building with more than one storey below ground level or a building where it is proposed use is primarily as a public building with capacity for 100 or more visitors. By a "public building" the regulation is referring to a shop or shopping centre; premises where food or drink are sold for consumption on the premises, including a nightclub, social club or dance hall; a stadium, theatre, cinema, concert hall; a sports ground; an exhibition hall or conference centre; or a hospital or premises for the provision of health care.
- 7.53 Where the work consists of a building not considered to be a "complex building" or the work is the horizontal extension of a building, commencement is to be regarded as commenced when the sub-surface structure of the building or the extension including

all foundations, any basement level (if any) and the structure of ground floor level is completed.

- 7.54 For any other work (such as work to an existing HRB), work is “commenced” when at least 15% is completed. The application for building control approval must specify the 15% of the work which the client considers will satisfy this requirement.
- 7.55 The definition of “commenced” has previously only appeared in guidance, and therefore, regulation 46A will provide greater clarity for how the definition should be interpreted by dutyholders. The definition of commencement to require the client to demonstrate that a sufficient amount of work has been carried out to retain their building control approval three years after the application for approval was given.
- 7.56 Regulation 9(9) states that where the aforementioned notices are given to the Regulator by someone on behalf of the client, the notice must include a statement signed by the client confirming the information contained within is correct. The approach is necessary to ensure the client remains accountable for their duties.
- 7.57 Regulations 9(4) and (5) prescribe that, on receipt of a commencement notice, the Regulator has a four-week period, in which to assess whether work has “commenced”. Should the Regulator not issue a rejection notice in four weeks the work is regarded as “commenced”. To support the Regulator in making this assessment, the Regulator can require further information, or require the laying open of work for inspection.
- 7.58 Where a rejection notice is given and accepted by the client, regulation 9(6) provides they may not give a further commencement notice until such time as they are satisfied the work is regarded as commenced.
- 7.59 Regulation 9(7) and (8) provide that the client may appeal the Regulator’s rejection to the First-tier Tribunal within 21 days of receiving it.

Existing higher-risk buildings: building control approval to start building work

- 7.60 Building work in existing buildings follows different building control routes depending on the work that is being carried out. Many building work projects are carried out either by a person certified under a third-party certification scheme or under a competent person scheme (these schemes are provided for in regulations 20 and 20A of the Building Regulations 2010). Around 3.4 million jobs per year are undertaken by installers from competent person schemes and third-party certifiers, providing consumers with a choice to select an authorised installer to self-certify that the work complies with building regulations. Scheme work will continue to be allowed in higher-risk buildings, under the supervision of the Regulator.
- 7.61 Where building work in an existing higher-risk building is not going to be carried out under a third-party certification or competent person scheme, or consists of emergency repairs, the applicant will be required to submit a building control approval application to the Regulator, complete with prescribed documents relevant to the size and scale of the building work being undertaken. The process for applying for building control approval and the Regulator considering the application is set out in regulations 11 to 16.
- 7.62 It is vital that the building control process for building work in existing buildings is as rigorous as the process for creating new higher-risk buildings to ensure safety for those that live in or use these buildings.

Notification of emergency work to existing HRB

- 7.63 Regulation 10 sets out that where emergency repairs are required, and it is not practicable to gain building control approval prior to starting them, the client must notify the Regulator and the responsible person (under the Fire Safety Order) as soon as possible about the work and submit a regularisation certificate application as soon as possible once it has been completed. Emergency repairs are defined by the regulation as repairs which must be carried out as a matter of urgency due to the risk to health, safety or welfare of persons in or about the building. Regularisation certificate applications are described by regulation 47 of this instrument (see below).

Building control approval for work to existing HRB

- 7.64 Regulation 11(1) requires an application for building work in an existing higher-risk building to be submitted to, and approved by, the Regulator before the work can commence. The Regulator may place requirements on the application which must be fulfilled before work can start.
- 7.65 Regulation 11(2) disapplies the requirements in regulation 11(1) for scheme work, exempt work and emergency works as defined by regulation 10.
- 7.66 After building control has been approved by the Regulator, regulation 11 requires the applicant to notify the Regulator of the date on which the approved work will begin in line with regulation 17(2).

Building control approval applications for work to existing HRB

- 7.67 Regulation 12 sets out the application requirements for proposed building work to existing higher-risk buildings. The requirements include details of the proposed work as well as the higher-risk building as it currently is. The details set out in regulation 12(1), along with those covered in regulations 12(2)(a) and (b), must be submitted to the Regulator for all applications.
- 7.68 Regulation 12(2)(c) sets out the prescribed documents that must be submitted to the Regulator alongside the application for any building work in an existing higher-risk building that meets the criteria set out for category A work (see below). The prescribed documents required as part of the application mirror those required for the design and construction of new buildings.
- 7.69 Regulation 12(2)(d) makes it a requirement that where the application is submitted by someone on behalf of the client, that application must include a statement signed by the client confirming they agree to the application being made and the information contained in it is correct.
- 7.70 Regulations 12(3)(a) to (e) sets out the information that must be provided as part of an application for category B work. Regulation 12(3)(e) allows the applicant to decide whether any of the prescribed documents required for category A work should be submitted for the category B work they are proposing. This flexible approach allows the dutyholder to decide the best documents to submit to demonstrate compliance and reflects that a one-size-fits-all approach is not appropriate. When the Regulator considers one or more of the prescribed documents required for category A work is necessary for the category B work to demonstrate compliance with the relevant building regulations requirements, they can request that it is provided, as set out in regulation 12(5).

- 7.71 Regulation 12(6) provides a description of the works falling into categories A and B. Category A work includes any work that increases or decreases the height or width of a higher-risk building; any work that changes the number of floors, including the addition or removal of mezzanine or gallery floor; work which changes the number of flats or residential units; work which changes the number or width of staircases or other escape routes; work on external walls, with the exception of work specified in regulation 7(3) of the 2010 Regulations; work which changes the building layout; work that changes either the passive or active fire safety measures in the building; and any other work effecting the common parts. All other work is considered Category B.
- 7.72 Regulation 12(7) outlines that the duties set out in regulation 12 do not apply to scheme work, exempt work, or emergency works as defined by regulation 10.

Building control approval applications for work to existing HRB: validity and time limit

- 7.73 Regulation 13 specifies the process the Regulator will take to validate a building control approval application for work to an existing higher-risk building and the length of time it has to make a decision. This is necessary to support a straightforward and seamless process for assessing applications for building control approval given the new “hard stop” imposed. This requires dutyholders to have received approval on the application before building work can start.
- 7.74 Regulation 13(3) prescribes a “valid application” as an application that fulfils the information requirements in regulation 12. Regulation 13(1) requires the Regulator, on receipt of a valid building control approval application, to notify the applicant and determine the application within eight weeks beginning with the date the application is received. This period can be extended under regulation 13(1)(b) should the Regulator and applicant agree an extension to the eight-week statutory time limit.
- 7.75 The time period for the building work is shorter than the statutory time limit prescribed in regulation 5 for HRB work, because the types of building work to an existing higher-risk building can vary significantly in scale and complexity.
- 7.76 Within that eight-week period to determine the application, no statutory time limit is imposed on the Regulator to validate an application. However, the application must be both validated and determined within the eight-week period.
- 7.77 Section 16 of the 1984 Act, which sets a five-week determination period for deposited plans, is repealed by the 2022 Act.
- 7.78 Regulation 13(2) requires the Regulator on receipt of an invalid building control approval application to notify the applicant and provide a reason for its invalidity. Where the applicant is not the client, the Regulator must give a copy of the notice informing the applicant of the decision to the client.

Building control approval applications for work to existing HRB: consultation

- 7.79 Regulation 14 sets out the same statutory consultation process as provided in regulation 6, but in relation to building control approval applications for work to an existing higher-risk building.
- 7.80 Regulation 14(1) prescribes that a consultation between the Regulator and the relevant enforcing authority for the Fire Safety Order must take place where the work is category A work, or category B work where part B of schedule 1 to the Building Regulations 2010 (fire safety requirements) applies, before a building control approval application is determined. The relevant enforcing authority for the higher-

risk regime is the fire and rescue authority for the area in which the proposed higher-risk building is to be constructed.

- 7.81 The regulation largely replicates the current requirements of article 45 of the Fire Safety Order. Article 45 is revoked by the 2022 Act. Moving the consultation on the plans for building work into building regulations will make the legislative framework clearer.
- 7.82 Regulation 14(2) and (3) prescribe that in consulting the enforcing authorities under the Fire Safety Order, the Regulator will need to provide sufficient plans to show how the proposed higher-risk building work complies with the applicable requirements of part B of schedule 1 to the Building Regulations 2010 (fire safety requirements) and how they are going to manage the building during occupation taking into account the Fire Safety Order requirements. Regulation 14(3) requires the Regulator to provide the enforcing authority with the fire and emergency file for category A work or the fire safety compliance information for category B work as this contains the relevant information with regard to dutyholder consideration of fire and structural safety. The fire and emergency file is described in paragraph 5 of schedule 1 and the fire safety compliance information is described in regulation 12.
- 7.83 Regulation 14(1) also provides for consultation between the Regulator and the sewerage undertaker before a building control approval application is determined where paragraph H4 of schedule 1 to the Building Regulations 2010 (building over sewers requirements) imposes requirements in relation to the proposed higher-risk building work. Regulation 14(2) sets out that the Regulator must provide sufficient plans to show how the proposed higher-risk building work, if carried out in accordance with those plans, will comply with the necessary requirements. The regulation aligns with what is currently required under regulation 15 of the Building Regulations 2010 for all building work to ensure sufficient consistency across all buildings and building regulations.
- 7.84 Regulation 14(2)(b) also requires the Regulator to wait 15 working days from starting the consultation with enforcing authorities or sewerage undertakers before determining a building control approval application but may agree an extension to this timeframe with statutory consultees. The time period aligns to the current requirements for statutory consultation in the Building Regulations 2010.
- 7.85 Regulation 14(4) sets out that if the consultees have responded with their views before the end of the 15 working day period, then the Regulator can proceed to determine the application the day after the views have been received. Furthermore, regulation 14(5) prescribes that the Regulator is not required to consult statutory consultees where there are already grounds to reject the application.

Building control approval applications for work to existing HRB: decisions

- 7.86 Regulation 15 sets out the circumstances in which a building control approval application for work to an existing higher-risk building is decided by the Regulator. Regulation 15(1) stipulates that the Regulator must approve an application unless the application does not comply with the requirements of regulation 12, does not provide sufficient detail to show whether relevant building regulations requirements would be contravened, shows that the proposed work would contravene a relevant requirement, or shows that the strategies, policies and procedures in place are insufficient to ensure compliance with relevant building regulations.

- 7.87 Regulation 15(2) provides that where one or more of the reasons in regulation 15(1) applies the Regulator may either reject the application or, with the agreement of the applicant, approve it subject to requirements.
- 7.88 The types of requirements that the Regulator may agree with the applicant are detailed in regulation 15(3), namely it can require a specific plan or document, or revised version of either, be provided by a certain time, or require that work cannot proceed beyond a certain point until a specific plan or document, or revised version of either, have been provided to and approved by the Regulator.
- 7.89 As set out in regulation 13, the Regulator must determine the outcome of an application within eight weeks. Under regulation 15(4) the Regulator must notify the applicant, and the client where the applicant is not the client, of the decision. If the application is rejected, under regulation 15(5) the Regulator must provide reasons for the rejection.
- 7.90 Regulation 15(6) sets out that where an application has been approved subject to requirements, the notice of approval must specify the requirement(s) imposed.
- 7.91 Where an application is successful, regulation 15(8) outlines that it has the effect of building control approval for the work to the existing higher-risk building being granted and the description of the work, plans and accompanying documents are approved.
- 7.92 In accordance with regulation 15(9) to (12) where the approval is subject to a requirement for a specified plan or document to be revised, the unrevised document is not to be considered as approved. Once a document or plan has been revised according to the requirement, and subsequently approved by the Regulator, it is considered to have been approved from the date approval is given by the Regulator.
- 7.93 Where a requirement details that a specific plan or document must be revised and approved by the Regulator before work can be carried out, the client is responsible for ensuring no work is carried out until the approval is given.
- 7.94 Where a requirement sets out that work cannot progress beyond a specified point, the requirement must detail the points in relation to the work and the plans or documents that must be approved to move beyond each point. The client is responsible for ensuring that work does not progress beyond the specified point without approval.
- 7.95 If requested, under regulation 15(14) the Regulator must provide reasons if it does not approve a plan or document required to progress work beyond the specified point.
- 7.96 Regulations 15(7) and (13) require the Regulator, if requested, to provide a paper copy of the approval.

Regulator's power to require notifications etc for work to existing HRB

- 7.97 Regulation 16 sets out that the Regulator may, by notifying in writing, require a client to notify the Regulator when a specific point of work has been reached or not cover up any specified work for a specified period.

Notice before starting on site and further notice when work is "commenced"

- 7.98 Regulation 17 makes provision equivalent to the requirements of regulation 9, but in relation to building work in an existing higher-risk building. Regulation 17 is based on the requirement to submit a commencement notice to the building control authority in regulation 16(1) of the Building Regulations 2010. It places a requirement on the

client to notify the Regulator twice, first when work starts on site and then again when work is “commenced”. Further information about these notices and the ability to appeal a rejection of the commencement notice can be found in this explanatory memorandum (see above for the former and below for the latter).

Changes before or during construction

- 7.99 Part 3 of the Regulations concerns changes to the work or the dutyholders following an application for building control approval being granted. Regulations 18 to 26 establishes change control procedures, where there is to be a change to how a project is managed or to what is being constructed. Regulations 27 to 29 cover the process where there is a change relating to a principal dutyholder. Regulation 30 covers the process for requesting a variation to a requirement applied as part of granting an application for building control approval.

Change control

- 7.100 One of Dame Judith’s recommendations was a need for a statutory change control process during construction. She recommended that the process required robust record-keeping of all documentation signed off by the Regulator and more significant changes may require permission to proceed.
- 7.101 The inclusion of a change control process within the regulations supports the aim of driving a change in culture across the industry; ensuring that the impact of changes is properly considered, compliance with building regulations is owned by those with the legal responsibility to meet them and accountability of the principal dutyholders is maintained throughout the project.
- 7.102 The regulations provide for a graduated approach of different types of change (recorded, notifiable and major) has been designed to reflect both the potential impact a type of change can have on compliance with the building regulations and what the Regulator would do with the information. The graduated approach prevents relatively minor changes going through unnecessary bureaucracy and more significant changes not receiving sufficient scrutiny.
- 7.103 When a building control approval is granted under regulation 7 or 15, the description of the work is the application, the plans of that work and the accompanying documents are approved. These are known as the “agreed documents”. Regulation 18 provides that any proposal to change the work in any way such that the work no longer matches the description or is no longer in accordance with the approved plans is a “controlled change”. The updated, approved versions of the approved plans are known as the “current agreed documents”. Regulation 18 describes the different aspects of the change control procedures. There are three types of controlled change: recorded, notifiable and major. What constitutes a notifiable or major change is set out in regulation 26. Regulation 18 provides all controlled changes must be recorded in the change control log, so controlled changes which are not notifiable or major changes are known as recordable or recorded changes.
- 7.104 The information which must be recorded in the change control log is described in regulation 19 and explained below.
- 7.105 Before implementing any controlled change, regulation 18(2) provides that the change must be recorded in the change control log and if any agreed documents are affected a revised version of the agreed document must be produced (that revision is itself a controlled change which must comply with the change control procedures). If the

controlled change and any revision needed to an agreed document to implement that change are not a major change or a notifiable change then the changes are a recordable change and only regulation 18(2) will apply.

- 7.106 Before implementing a notifiable change (and any work which relates to it), regulation 18(2), (3) and (4) together provides that a notification must be sent to the Regulator, the change must be recorded in the change control log and any agreed documents which are affected by the change must be revised (that revision is itself a controlled change which must comply with the change control procedures). The contents of the notification are described by regulation 20. Notifiable changes are defined in regulation 26.
- 7.107 Before implementing a major change, regulation 18(2), (5) and (6) together provide that a change control application must be submitted to and approved by the Regulator, the change must be recorded in the change control log and any agreed documents which are affected by the change must be revised (that revision is itself a controlled change which must comply with the change control procedures). The change control application is described by regulation 21. Major changes are defined in regulation 26.
- 7.108 There may be instances where a major change necessitates other changes being made consequentially, which are themselves major or notifiable changes. Regulations 18(7) and (8) allow for a single change control application covering all the changes to be submitted to the Regulator. Where a notifiable change is included in an application then separate notifications covering the notifiable changes would not need to be sent.
- 7.109 This option allows industry to submit holistic change control applications, providing the opportunity to more easily demonstrate how the various changes work together to ensure continued compliance with the building regulations. It also prevents administrative work being duplicated to submit multiple change control applications and notifications.
- 7.110 Regulation 18(9) confirms that if a major change and another controlled change are not related to or are not a consequence of one another than the process described in regulations 18(7) and (8) cannot be used.
- 7.111 Whilst a change control application is being considered by the Regulator, a new change control application or notification describing a change which is consequential on the original change described in the change control application cannot be submitted. This is described by regulations 18(10) and (11). This encourages dutyholders to think through all the consequential changes which may be made as part of a change at the start of the change control process.

Change control: record-keeping

- 7.112 Regulation 19 requires that the principal contractor must set up a change control log for the project. This regulation sets out the information which must be recorded when any controlled change is made, regardless of whether it is recordable, notifiable or major.
- 7.113 The principal contractor must create and maintain the change control log for the project as they are responsible for overseeing the construction of the building work.
- 7.114 Regulation 19(2) describes the information which must be included within the change control log. The information is: the name of the individual recording the change; a description of the proposed change; the reason the change is proposed; what type of change the proposed change is (recorded, notifiable or major); the name and

occupation of the people who have provided advice about the change and a summary of their advice; the agreed documents which have been affected by the proposed change and confirmation that they have been revised; and, an explanation of how the project will continue to comply with the relevant building regulations requirements and this instrument. This is known as the compliance explanation. It describes how the building work will continue to comply with the relevant functional requirements. It must also describe how the change control procedures, requirements where there is a change in the principal dutyholder, the golden thread of information requirements, the mandatory occurrence reporting requirements and the dutyholder requirements after the controlled change will continue to be met.

- 7.115 The information within the change control log demonstrates that the change has been considered and compliance with the relevant building regulations will continue.
- 7.116 The amount of detail which will need to be included within the change control log is not specified by the regulations. This allows a proportionate approach to recording changes within the change control log, with more complex or significant changes requiring more detail.

Change control: notification requirements

- 7.117 Regulation 20 describes the notice which must be sent to the Regulator when a notifiable change is proposed. Regulation 18 provides a notifiable change cannot be implemented before the change is notified.
- 7.118 The notice must be signed by the client or someone on behalf of the client. If the notice is signed by someone on behalf of the client, then the client must sign a statement confirming they agree with the content of the notice and with it being sent to the Regulator. This is set out in regulations 20(1) and (1)(f). This continues the approach taken for the applications for building control approval, ensuring the client maintains overall responsibility and accountability for the project being done on their behalf.
- 7.119 The notice must contain the following information: a description of the proposed change; the reason the change is proposed; the name and occupation of the people who have provided advice about the change and a summary of their advice; the agreed documents which have been affected by the proposed change and confirmation that they have been revised; and a compliance explanation as described in regulation 19.
- 7.120 A copy of the agreed documents which are revised due to the proposed change must be sent to the Regulator alongside the notice.
- 7.121 In response to the notification, the Regulator may request further information under regulation 20(2) from the person who sent the notification to the Regulator. Under regulation 20(3), the person has 10 working days to provide the information.
- 7.122 Under its enforcement powers in the 1984 Act, the Regulator could send a compliance notice requiring that remedial work is done if a notifiable change is implemented.
- 7.123 The information provided in the notification mirrors the information required in the change control log, preventing industry from having to record different information from what would be submitted to the Regulator.

Change control applications

- 7.124 Regulation 21 describes the change control application which must be sent to the Regulator when a major change is proposed. Regulation 18 provides a major change cannot be implemented before the change control application has been granted. Under its enforcement powers in the 1984 Act (and the provision in regulation 61(e) of this instrument), the Regulator could impose a stop notice on the site where work is carried out before the approval.
- 7.125 The change control application must be signed by the client or someone on behalf of the client. If the application is signed by someone on behalf of the client, then the client must sign a statement confirming they agree with the content of the application and with it being sent to the Regulator. This is set out in regulations 21(1) and (1)(f). This continues the approach taken for the applications for building control approval, ensuring the client maintains overall responsibility and accountability for the project being done on their behalf.
- 7.126 The application must include or be accompanied by the following information: the details of the principal dutyholders (including their contact information); the application is being made under regulation 21; a description of the proposed change; the reason the change is proposed; the name and occupation of the people who have provided advice about the change and a summary of their advice; updated versions of the agreed documents which have been affected by the proposed change; plans which show the proposed number of flats or residential rooms the higher-risk building will contain (if that number is altering); and, a compliance explanation as described in regulation 19.
- 7.127 This information provides useful administrative information for the Regulator, for example it ensures the Regulator holds up to date contact information of the principal dutyholders, or it mirrors the information required in the change control log, preventing industry from having to record different information from what would be submitted to the Regulator.
- 7.128 Regulations 22 to 24 describe what the Regulator must do as part of considering a change control application.

Change control applications: validity and time limit

- 7.129 Regulation 22 specifies the process the Regulator will take to validate a change control application for major changes. Regulation 22(3) prescribes a “valid application” as an application that fulfils the information requirements in regulation 21. Regulation 22(1) requires the Regulator on receipt of a valid change control application to notify the applicant and determine the application within six weeks beginning with the date the application is received, or a longer period should the Regulator and applicant agree an extension to the statutory time limit.
- 7.130 Regulation 22(2) requires the Regulator on receipt of an invalid change control application to notify the applicant and provide a reason for its invalidity. Where the applicant is not the client, the Regulator must also give a copy of the notice informing the applicant of the decision to the client.

Change control applications: consultation

- 7.131 Regulation 23 provides for the same statutory consultation process, as prescribed in regulation 6, but in relation to change control applications.

- 7.132 Considering the nature of higher-risk building work and the imposing of a requirement on dutyholders to seek approval for some prescribed “major” changes, the government is requiring a statutory consultation on change control applications.
- 7.133 Regulation 23(1) provides for consultation between the Regulator and the relevant enforcing authorities for the Fire Safety Order before a change control application is determined. A consultation is required where part B of schedule 1 to the Building Regulations 2010 (fire safety requirements) imposes requirements in relation to the work to which the controlled change relates.
- 7.134 Regulation 23(2) requires the Regulator to provide sufficient plans to show how the work, if carried out in accordance with those plans, will comply with the applicable requirements of part B of schedule 1 to the Building Regulations 2010 (fire safety requirements). The Regulator must also provide the enforcing authority with either the latest agreed version of the fire and emergency file or, if the proposed change affects the fire and emergency file, the proposed new version of. Alternatively, the Regulator must provide the fire safety compliance information, depending on the type of building work proposed. The fire and emergency file and the fire safety compliance information is explained in greater detail above. These documents contain relevant information with regard to dutyholder consideration of fire safety and how they are going to manage the building during occupation taking into account the Fire Safety Order requirements.
- 7.135 Regulation 23(1) also provides for consultation between the Regulator and the sewerage undertaker before a change control application is determined where paragraph H4 of schedule 1 to the Building Regulations 2010 (building over sewers requirements) imposes requirements in relation to the work to which the controlled change relates. Regulation 23(2) requires the Regulator to provide sufficient plans to show how the proposed higher-risk building work, if carried out in accordance with those plans, will comply with the aforementioned requirements.
- 7.136 Regulation 23(2) also requires the Regulator to wait 10 working days from starting the consultation with enforcing authorities or sewerage undertakers before determining a change control application but may agree an extension to this timeframe with statutory consultees. The time period is shorter than the equivalent one for building control approval applications because the amount of information for statutory consultees to consider in relation to a major change is generally likely to be less.
- 7.137 Regulation 23(4) sets out that if all consultees have responded with their views before the end of the 10-working day period then the Regulator can proceed to determine the application the day after the views have been received. Furthermore, regulation 23(5) prescribes that the Regulator is not required to consult statutory consultees where there are already grounds to reject the application.

Change control applications: decisions

- 7.138 Regulation 24 sets out the circumstances in which a change control application for a major change is decided by the Regulator. It mirrors regulations 7 and 15. Regulation 24(1) stipulates that the Regulator must approve an application unless the application does not comply with the requirements of regulation 21, does not provide sufficient detail to show whether relevant building regulations requirements would be contravened, shows that the proposed work would contravene a relevant requirement, or shows that the strategies, policies and procedures in place are insufficient to ensure compliance with relevant requirements.

- 7.139 Regulation 24(2) provides that where one or more of the reasons in regulation 24(1) applies the Regulator may either reject the application or, with the agreement of the applicant, approve it subject to requirements.
- 7.140 The types of requirements the Regulator may agree with the applicant are detailed in regulation 24(3), namely it can require a specific plan or document, or revised version of either, to be provided by a certain time, or that work cannot proceed beyond a certain point until a specific plan or document, or revised version of either, have been provided to and approved by the Regulator.
- 7.141 As set out in regulation 22, the Regulator must notify the applicant and the client of the outcome of their application within six weeks. If the application is rejected, under regulation 24(5) the Regulator must provide reasons for the rejection.
- 7.142 Regulation 24(6) sets out that where an application has been approved subject to requirements, the notice of approval must specify the requirement(s) imposed.
- 7.143 Where an application is successful, it has the effect that building control approval for the major change has been granted and that the description of the work, updated plans, and updated accompanying documents are approved.
- 7.144 Where the approval is subject to a requirement for a specified plan or document to be revised, the unrevised document is not to be considered as approved. Once a document or plan has been revised according to the requirement, and subsequently approved by the Regulator, it is considered to have been approved from the date approval is given by the Regulator.
- 7.145 Where a requirement details that a specific plan or document must be revised and approved by the Regulator before work can be carried out, the client is responsible for ensuring no work is carried out before the approval has been given.
- 7.146 Where a requirement sets out that work cannot progress beyond a specified point, the requirement must detail the points in relation to the work and the plans or documents that must be approved to move beyond each point. The client is responsible for ensuring that work does not progress beyond the specified point without approval.
- 7.147 If requested, under Regulation 24(14) the Regulator must provide a reason if it does not approve a plan or document required to progress work beyond the specified point.
- 7.148 Regulation 24(7) and 24(13) require the Regulator, if requested, to provide a paper copy of the approval.

Change control: regulator power to specify notifiable changes and major changes

- 7.149 Regulation 25 provides the Regulator with the power to change the process a specific controlled change goes through. By using this power, the Regulator can specify that: a recorded change is a notifiable or major change; a notifiable change is a major change; or a major change is a notifiable change.
- 7.150 The regulations do not allow the Regulator to designate that a notifiable or a major change is a recorded change as we do not consider there are circumstances where the Regulator will not need to be proactively made aware types of matters included in the definitions of the notifiable and major changes in regulation 26.
- 7.151 To exercise this power the Regulator must give a notice to the principal dutyholders for the project specifying the type of change and the process it must go through. This

power can be used at any point from when building control approval is granted to when a completion certificate is issued.

- 7.152 The power is included within the regulations as there may be certain projects where a specific type of change could have a much larger impact upon the compliance with building regulations than generally for all projects. The other reason the power may need to be exercised is a series of more minor changes could be made which cumulatively have a large impact upon compliance with building regulations.

Change control: major changes and notifiable changes

- 7.153 Regulation 26 sets out in law which controlled changes to the higher-risk building work and documents agreed as part of a building control approval application are major changes, and which are notifiable changes. Controlled changes which do not fall within the definition of major change or notifiable change are recordable changes.

New client etc

- 7.154 Regulation 27 prescribes the process that must be followed when there is a change to the client of higher-risk building work. The regulation sets out the requirements that are placed on both the outgoing client (“C” in the regulations) and the new client (“N” in the regulations). A change of client procedure is necessary to ensure the golden thread of information is not undermined and clients are aware of their responsibilities.
- 7.155 As set out in regulation 27(14), the requirements of the regulation do not apply to a domestic client or to work to an existing higher-risk building which consists only of emergency repairs as listed in regulation 10, exempt work as listed in schedule 2, or work carried out under a competent person scheme or third-party certification scheme. It is not appropriate to apply the change of client procedure to this work as it is either self-certified, only carried out in an emergency or is exempt from procedural requirements.
- 7.156 Regulation 27(1) outlines that, within 14 days of ceasing to be the client, the outgoing client must provide the new client with a copy of the golden thread of information, other information detailing the work comprised in the project, a document explaining the arrangements in place to ensure dutyholders meet the competence requirements set out in part 2A of the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023) and a signed statement outlining when the client ceased to be the client, that up until that date, the client has fulfilled their duties and, to the best of their knowledge, the design and any completed building work complies with all applicable building regulations. Failure to share this information will be an offence under section 35 of the 1984 Act. This information will help maintain the golden thread information and ensure a new client can sufficiently carry out their duties.
- 7.157 In addition, regulation 27(2) requires the new client, within 28 days of becoming the client, to notify the Regulator. This notification must state the date they became the client, confirm they have received the aforementioned information from the outgoing client and confirm they are aware of the requirements imposed on a client by building regulations. The notification must also include a copy of the outgoing client’s aforementioned signed statement. The new client must also ensure they record the change of client in the change control log and revise the construction control plan. Regulation 27(3) outlines that where the new client is unable to confirm they have received the aforementioned information or provide a copy of the signed statement

from the outgoing client; they must provide a reason. The notification will support the Regulator to understand whether the handover requirements have been met and, if not, whether any enforcement action should be taken.

- 7.158 Regulation 27 also sets out how the requirements are modified for certain events where a client is unable to remain in their position, specifically where a client experiencing an insolvency event, becomes incapacitated or dies. It is necessary to modify the requirements where an outgoing client is unable to meet the requirement to send prescribed information to the new client as a result of these events.
- 7.159 As set out in regulation 27(4), where a trustee in bankruptcy has been appointed in relation to a client, or the client's property vests in a liquidator under section 145 of the Insolvency Act 1986 (the 1986 Act), but no building work has been carried out since their appointment or vesting, the appointed person under the 1986 Act is not to be considered the client. The trustee must send any new client a copy of the golden thread information and any information sufficient to detail the work comprised in the project. They must also send a signed statement that the golden thread of information has been provided. If they are unable to confirm they have the document and make the signed statement, they must explain the reason why. In bankruptcy and liquidation proceedings, property may vest in an appointed officeholder and therefore, the appointed officeholder will need to meet certain obligations to maintain the golden thread when selling the property to a new client.
- 7.160 As set out in regulations 27(5) and (6), where a client becomes incapacitated and a property and financial affairs deputy has been appointed by the Court of Protection, or a person has power of attorney in relation to the higher-risk building and intends to act in the capacity of the client, the appointed person must notify the Regulator within 28 days of taking on any client responsibilities. The notification must include the date they assumed client responsibilities, confirmation that they have the relevant documentation related to the higher-risk building work and are aware of the requirements imposed on a client by the building regulations. It must also include a signed statement which confirms that as far as they are aware, on the date of the notice, the design work and the building work complies with all applicable requirements of the building regulations. The appointed person must also ensure they record the change in the change control log and revise the construction control plan. Should the appointed person be unable to confirm they have the documents or make the signed statement they must explain the reason why. Breaching these requirements is not subject to enforcement under section 35(2) of the 1984 Act. It is not deemed appropriate considering the circumstances of a client becoming incapacitated. This is set out in regulation 27(13).
- 7.161 Regulations 27(7) and (8) prescribe that where the client dies and a personal representative is appointed to administer the estate, within 28 days of being appointed, the personal representative must notify the Regulator of this fact. The notification must state the date of their appointment, the date of the client's death and confirmation that they have the information relevant to the higher-risk building work, including the golden thread of information and the document explaining the arrangements in place to meet the competence and dutyholder requirements in Part 2A of the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023). They must also state whether or not they intend to act as the client in relation to the project. As set out in regulation 27(9), should the personal representative be unable to confirm they have the relevant

information, they must explain why. We have provided that breaching these requirements is not subject to enforcement under section 35(2) of the 1984 Act. It is not appropriate considering the circumstances of a client death to do so. This is set out in regulation 27(13).

- 7.162 As set out in regulation 27(10), where the personal representative intends to act as the client, the personal representative must comply with the requirements outlined in regulation 27(2) apart from the requirements to confirm they have received the golden thread information and they are aware of the requirements imposed on the client, and the requirement to include a copy of the outgoing client's signed statement. The client is deceased and will be unable to send any information to the new client. Instead, the personal representative must confirm they have a copy of the golden thread of information, information sufficient to detail the work comprised in the project and a document explaining the arrangements in place to meet the competence and dutyholder requirements in part 2A of the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023). Should the personal representative be unable to confirm they have the relevant information, they must explain why. This is prescribed in regulation 27(11).
- 7.163 Regulation 27(12) prescribes that a person is to be treated as a new client where a project is carried out for them instead of the client, but this does not include scenarios where a person purchases, or enters into a contract to purchase, a legal interest in a dwelling created or to be created in a higher-risk building. This prevents a person buying a dwelling off-plan assuming client duties, which would be disproportionate.

Insolvency etc of the client: notification

- 7.164 Regulation 28 sets out certain requirements that must be met in the event of a client experiencing an insolvency event or a receiver is appointed by the courts or by a mortgagee. The procedure is necessary to make sure the Regulator is informed when a client of a higher-risk building may be in financial difficulty. As prescribed in regulation 28(7), the procedure does not apply to a domestic client as the insolvency of a domestic client carrying out design and construction work is unlikely, and these requirements would not be proportionate considering the scale of the work being carried out by a domestic client.
- 7.165 As set out in regulations 28(1) and (2), in the event of debtor in possession proceedings where there is a moratorium under part A1 of the Insolvency Act 1986, a proposed company voluntary arrangement for the purposes of part 1 of the Insolvency Act 1986 or a proposed individual voluntary arrangement proposed under part 8 of the Insolvency Act 1986, the client must notify the Regulator of this fact within 14 days. The notification must include the contact details of the client and a company registration number, where applicable, and identify each higher-risk building for which they are the client. The notification must also provide the information referred to in rule 1.6 of the Insolvency (England and Wales) Rules 2016 that is known to them at that point in time. Rule 1.6 covers the information required to identify persons, officeholders and insolvency proceedings. With regard to debtor in possession proceedings, the client is the most appropriate entity to notify the Regulator as the intention behind these insolvency proceedings is for the client to reclaim their position and remain able to carry out their duties.

- 7.166 Regulations 28(3) and (4) prescribe that, in the event of all other insolvency proceedings, the appointed person must notify the Regulator within 14 days of their appointment. Regulation 28 sets out the appointed persons as an administrator, administrative receiver, a receiver appointed by the courts or by a mortgagee, a liquidator or a trustee. The notification must state the name and address of the client in relation to which the appointment relates, including identifying every higher-risk building project, identify the nature of their appointment and provide their contact details and provide the information referred to in rule 1.6 of the Insolvency (England and Wales) Rules 2016 that is known to them at that point in time. With regard to these types of insolvency proceedings, the appointed officeholder will be acting on behalf of the insolvency company or individual and is deemed the most appropriate person to issue this notice.
- 7.167 Regulation 28(5) prescribes that where any property in relation to a higher-risk building is disclaimed under section 178 or 315 of the Insolvency Act 1986, the disclaimer of the property must give a copy of the notice of disclaimer under rule 19.2 of the Insolvency (England and Wales) Rules to the Regulator within 28 days. Property of the insolvency can be disclaimed where that property is onerous, and this allows a liquidator or a trustee to renounce their claim over property vested in the insolvent's estate. An "onerous" property is an unprofitable contract, is unsaleable or may give rise to a liability to pay money or perform any other onerous act. This notification is necessary to make sure the Regulator is aware when a higher-risk building has been disclaimed.
- 7.168 Regulation 27(6) provides that breaching the requirements in regulation 28(3) is not subject to enforcement under section 35(2) of the 1984 Act. It is not appropriate considering the role, duties and functions of the appointed officeholder.

New principal contractor or principal designer etc: notification

- 7.169 Regulation 29 sets out certain requirements that must be met if a principal contractor (or sole contractor) or principal designer (or sole or lead designer) changes after building control approval for higher-risk building work has been granted. The procedure is necessary to make sure the Regulator is informed when a principal dutyholder changes and the client fulfils the competence and dutyholder requirements in part 2A of the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023). Regulation 29(1) sets out that the procedure applies to higher-risk building work.
- 7.170 As set out in regulation 29(3), where a principal contractor or principal designer changes, the outgoing principal dutyholder, on request from the client and before the appointment of a new principal dutyholder, must send a signed notice to the client which sets out their contact details, the dates of their appointment and a certificate they have fulfilled the dutyholder and competence requirements in part 2A of the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023). Should they be unable to provide the certificate, they must provide a statement explaining the reasons why. This information is required from the outgoing principal dutyholder to make sure there is a clear audit trail and the duties of principal dutyholders are clear to those assuming the roles.
- 7.171 Regulations 29(2), (4), (5) and (6) require the client to send a notice to the Regulator within 14 days of the new appointment. The notice must contain the contact details of the person appointed, a statement the client has met the competence and dutyholder

requirements prescribed in part 2A of the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023) and is satisfied the appointed person is competent. The notice must also contain a copy of the record the client has created under regulation 11D(8) or (9) of the aforementioned regulations and a signed declaration to the truth of the aforementioned statement. Where the client is unable to obtain the statement from the outgoing principal dutyholder, the notice must be accompanied by a statement explaining the steps they have taken to obtain the statement and any reasons given by the principal dutyholder for not providing the statement. This notice is required to inform the Regulator that there has been sufficient consideration of competence by the client before an appointment has been made and the new appointed person is aware of their duties.

- 7.172 Regulation 29(7) further requires the client, following the appointment, to record the change in the change control log and revise the construction control plan. The requirement makes sure the change control log and relevant prescribed document is updated for this change.
- 7.173 Regulation 29(8) also prescribes a separate procedure where a principal dutyholder changes on a project with a domestic client. A domestic client is defined in regulation 3 of the Building Regulations 2010 as a client for whom a project is being carried out which is not in the course or furtherance of a business of that client. A separate procedure is considered necessary considering some client duties will be carried out by a principal dutyholder instead of the domestic client. The purpose of the modified duties on the domestic client is to prevent onerous requirements falling on a domestic client, when they are likely to be carrying out less significant work contained within an individual dwelling.
- 7.174 As set out in regulation 29(8), where the client is a domestic client and a principal dutyholder changes. The outgoing dutyholder must, within 5 calendar days of their appointment ending, give a notice to the domestic client. The notice must set out their contact details, the date their appointment ended and a certificate that they have fulfilled the dutyholder and competence requirements in part 2A of the Building Regulations (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023). Should they be unable to provide the certificate, they must provide a statement explaining the reasons why. This provides the domestic client with relevant information related to the period when the outgoing principal dutyholder was designing or carrying out proposed building work.
- 7.175 Regulation 29(8) further prescribes that the domestic client must provide the aforementioned information given to them by the outgoing dutyholder to the new principal dutyholder appointed as soon as practicable after that date. In addition, regulations 29(8) to (11) prescribe that the new principal dutyholder appointed must notify the Regulator within 14 days of their appointment. The notice must contain the contact details of the person appointed and the outgoing principal dutyholder, the location of the building work and a statement explaining that the notice is given on behalf of the domestic client. The notice must also include a copy of the aforementioned certificate provided by the outgoing principal dutyholder. If a copy has not been provided, the new principal dutyholder must provide an explanation and include a statement from the outgoing principal dutyholder that sets out the reasons they have been unable to provide the certificate.
- 7.176 The requirement to record the change of principal dutyholder in the change control log and revise the construction control plan does not fall on the domestic client.

Regulation 29(12) prescribes that the new person appointed as the principal dutyholder must fulfil this requirement.

Variation of a requirement imposed on a building control approval

- 7.177 As explained above, the Regulator may set certain requirements when approving an application of building control approval under regulation 7 or 15. Regulation 30 prescribes a procedure to enable dutyholders to request that a requirement imposed on a building control approval is varied. This procedure is separate to change control to reflect that requirements are different to controlled changes and are imposed by the Regulator. This regulation provides further flexibility during the construction phase, should the client consider that part of a requirement can be fulfilled, and work could progress while the rest of the requirement remains in place. In instances where this is the case, they can ask the Regulator to vary the requirement.
- 7.178 Regulations 30(1) and (2) set out the process to vary a requirement. The client must send to the Regulator a signed notice that includes the contact details of the client, a statement the notice is given under this regulation, a description of the proposed variation and the reasons why it is proposed and the name and occupation of each person whose advice was sought in relation to the proposed variation and a summary of any advice provided. This information is required to ensure the Regulator has sufficient information to understand why the variation is necessary and the potential impacts it may have in overseeing the project's compliance with all applicable building regulations. Regulation 30(3) sets out that where the notice is given by someone on behalf of the client, a statement signed by the client that they agree with the notice and that the information in the notice is correct must also be given. This ensures the Regulator remains accountable for notices given to the Regulator.
- 7.179 Regulation 30(4) prescribes that the Regulator will have up to 28 days to determine whether the variation is agreed and must notify the dutyholder of their decision in writing. 28 days is considered an appropriate period of time as whilst the information within the notice may be relatively limited, the Regulator will need to thoroughly consider the potential impact on the project's oversight.
- 7.180 As set out in regulation 30(8), if the variation is rejected, the Regulator must notify the client of the reasons why. A paper copy of the notice outlining the Regulator's decision must be provided, if requested by the client.
- 7.181 Under regulations 30(4) and (5) the Regulator may agree an extension to the 28-day timeframe with the person giving the notice, but should the variation not be granted within 28 days and no extension agreed, the regulation sets out that the variation is to be treated as refused. This approach ensures a requirement cannot be varied without the agreement of the Regulator.

Golden thread, mandatory occurrence reporting, information handover etc

- 7.182 Part 4 of the Regulations concerns the creation and storage of information and its handover to those responsible for the building after construction and the new mandatory occurrence reporting system. Regulation 31 and 38 establish the golden thread of information and the procedures for handing the information over to dutyholders responsible for maintaining the building once construction has finished. Regulations 32 to 37 set out provisions for the principal dutyholders to develop a mandatory occurrence reporting system and the procedure for reporting occurrences to the Regulator.

Golden thread

- 7.183 Regulation 31 specifies the information and documents that the client must ensure are kept as part of the golden thread of information before building work begins on a higher-risk building, and that this golden thread of information must be kept electronically.
- 7.184 Dame Judith’s report set out that there were “deep flaws” with the existing building safety system, and the current system is “not fit for purpose”, identifying serious issues with the transparency of information, and inadequate information audit trails throughout the life cycle of higher-risk buildings. Her report highlighted that there were significant issues in the “production, maintenance, and handover of building information”, stating “*where building information is present, it is often incomplete or held in paper form and is not accessible to the people who need to see it*”. This meant there was little or no available evidence that higher-risk buildings had been built to be safe and continued to be safe.
- 7.185 To address these issues, Dame Judith recommended the introduction of a ‘golden thread of information’ for all higher-risk buildings to ensure that accurate building information is securely created, updated and accessible throughout a building’s life cycle. She stated that “*a robust golden thread of key information*” should be “*passed across to future building owners to underpin more effective safety management throughout the building life cycle*”.
- 7.186 This information flow supports the design and construction of buildings as holistic systems and allows people to use information to safely and effectively design, construct and refurbish their buildings. It will also ensure that residents and owners of residential units can have confidence that their homes have been built and refurbished safely.
- 7.187 Regulation 31(1) specifies that the client must ensure that they put in place an electronic facility to hold the golden thread of information. The client must maintain this electronic facility or ensure that someone else on their behalf maintains it. The client must also ensure that the principal designer and principal contractor have access to the facility and can maintain and update the golden thread information. The regulation specifies that this is required for higher-risk building work.
- 7.188 Regulations 31(2)(a), (c) and (f) specify that the client must ensure that the golden thread information is: kept in an electronic format; accurate; up to date and secure from unauthorised access. Regulation 31(2)(b) specifies that the client should, as far as is reasonably practicable, ensure that the language, terminology and definitions in the golden thread of information are consistent.
- 7.189 Regulation 31(2)(b) and (d) specify that the golden thread information must be kept so it can be transferred electronically to other persons without the data, information or documents in it being lost or corrupted and it also requires the information to be available in a readable format which is intelligible to the intended readers of the data, and any key needed to understand the data is provided with the data.
- 7.190 Regulation 31(2)(e) specifies that if the principal designer or principal contractor make a request for information in the golden thread, to enable them to comply with their requirements under the building regulations, then the client must provide the information as soon as reasonably practicable. Regulation 31(2)(g) also specifies that when the golden thread information is changed, then the person who made the change and the date of that change must be recorded.

- 7.191 Regulation 31(3) to (12) set out the golden thread information.
- 7.192 Designs - the principal designer must ensure that any designs for the higher-risk building work that are produced before a building control approval application is submitted are provided to the client. The client must ensure, that before construction starts (or in the case of a stage of HRB work, that stage begins) that the design is stored electronically as part of the golden thread of information. This does not include any redundant designs, but only designs that will form part of the building work that will take place. Any designs of elements that will not form part of the building work (for instance if there is a change in the designs from a pitched roof to a flat roof), do not need to be kept as golden thread information.
- 7.193 Plans etc - when building control approval is granted but before construction work begins for HRB work or work to existing HRB, or if it is a stage of HRB work then before construction work on that stage begins, the client must ensure that certain information and documents are kept as golden thread information in the electronic facility (which the client is required to set up by regulation 31(1)). The regulation specifies the information that must be kept is a copy of the fire statement², plans and each of the other documents included in the building control approval application which has been approved by the Regulator and all the evidence recorded, pursuant to the construction control plan, to show compliance with the applicable requirements of the building regulations.
- 7.194 Emergency repair notices - when emergency repairs are carried out in the building (under regulation 10) then the client must ensure that a copy of the notice required (notification of emergency repairs to an existing HRB) must be kept as in the golden thread of information.
- 7.195 Agreed documents - the client must update the golden thread of information to store certain documents as soon as practicable after the document is provided, approved or produced. When the Regulator imposes a 'term of requirement' on the grant of building control approval (under regulation 7) or on grant of building control approval to work to existing HRB (under regulation 15), this could include, for example, the requirement to provide a specified plan or agreed document. If this is the case, the client must ensure that when a document is provided by the client or approved by the Regulator under terms of requirement, then the document must be kept as in the golden thread of information. The regulation also specifies that the client must keep the information and documents required under regulation 24 (decisions on change control application) as golden thread information.
- 7.196 Change control log info and revised documents - when a controlled change is proposed, under regulation 31(7) the client must ensure that a copy of the record in the change control log (required under regulation 18(2)(a)) is kept as in the golden thread of information. If the proposed change is not carried out the golden thread of information must be updated to reflect this. Where a controlled change is proposed and an agreed document is affected by the change, the client must ensure that a copy of the revised version of the document (required to be produced under regulation 18(2)(b)) is kept as in the golden thread of information. If the proposed change is not

² The Regulation defines fire statement as any statement relating to the proposed higher-risk building submitted in accordance with article 9A of the Town and Country Planning (Development Management) (England) Order 2015. This is a requirement for the procedure known as Planning Gateway One.

implemented, then a revised version of the document must be produced. The client must ensure the golden thread of information is updated as soon as practicable after the revised version is produced.

- 7.197 Notices of change of dutyholder - when a client gives a notice to the Regulator of the appointment of a new principal contractor or principal designer (under regulation 29), then the client must keep a copy of the notice in the golden thread.
- 7.198 Mandatory occurrence reports - where a mandatory occurrence report is submitted to the Regulator (under regulation 33) the client must keep a copy of the report as in the golden thread of information. The client must ensure this is done as soon as practicable after the report is submitted.
- 7.199 Completion certificate or partial completion certificate applications - when the client proposed to make a completion certificate application or a partial completion certificate application, they must ensure this application and a copy of all accompanying documents are kept as in the golden thread of information.
- 7.200 Regulation 31(12) specifies that the requirements of this regulation do not apply to work to existing HRB which consists only of scheme work or exempt work. Scheme work information requirements are covered in regulation 39.
- 7.201 Regulation 31(13) outlines that “golden thread information” means the information set out in the regulation that must be stored in the facility in regulation 31(1), this includes previous versions of any document which has been updated.

Mandatory occurrence reporting system

- 7.202 Dame Judith found in her report that whilst mechanisms exist to report safety issues around the structural integrity of a building there was no coherent approach to reporting safety issues during the construction or occupation of buildings.
- 7.203 She therefore recommended that a system of mandatory occurrence reporting should be set up for higher-risk buildings. The requirement to report should be for key identified dutyholders on a no blame basis. The outputs of these reports (and statistical analysis of this data) should be publicly available so that others can learn from the reports and understand potential safety risks that could occur during the design and construction phase and take proactive steps to mitigate against them happening. Non-reporting should be regarded as non-compliance and sanctions applied appropriately.
- 7.204 Regulation 32 makes it a requirement for the principal dutyholders to set up a mandatory occurrence reporting system before construction starts and they must maintain it throughout construction. The system must allow for prompt reporting of safety occurrences. The principal dutyholders and safety occurrence are defined in regulation 35 (see below).
- 7.205 Regulation 31(2) requires the principal dutyholders to take all reasonable steps to ensure anyone who is involved in the design and construction of the higher-risk building or who otherwise periodically visits the site is provided with sufficient information to enable them to use the system.
- 7.206 As well as the requirement under regulation 32(2) for the principal contractor to undertake inspections of the building work for safety occurrences, under regulation 32(4) the principal designer should inspect any design work during the construction phase for safety occurrences.

Mandatory occurrence reporting: reporting to the regulator

- 7.207 Regulations 33(1) and (2) prescribes that where a principal dutyholder becomes aware of a safety occurrence, they must send a notice of the occurrence to the Regulator, and then provide a written report to the Regulator within 10 days.
- 7.208 Regulation 33(3) sets out the information which must be provided to the Regulator in the report, including information about the safety occurrence and a description of the measures taken to mitigate or remedy the occurrence.
- 7.209 In keeping with Dame Judith's recommendation, the content of the reports to the Regulator is not admissible in court, except in the circumstances prescribed in regulation 33(4).

Mandatory occurrence reporting: defences

- 7.210 Regulation 34 provides the circumstances which may be used as a defence where a principal dutyholder has committed an offence by failing to follow the procedure in regulation 33.

Mandatory occurrence reporting: definitions

- 7.211 Regulation 35 provides definitions for terms used in the mandatory occurrence reporting regulations including construction phase, HRB design work and reporting person.
- 7.212 Regulation 35 also provides the definition of a safety occurrence, which is a situation or incident which can affect the fire safety or the structural integrity of a building, to the extent that it meets the 'risk condition'. This is that the occurrence could give rise to the risk of significant number of deaths or serious injury to a significant number of people. This requirement will apply to occurrences identified during the construction phase, but will also apply in relation to design work, when, for example, an element of the design, if built, would affect the fire safety or the structural integrity of the building to the extent that it meets the 'risk condition'.

Mandatory occurrence reporting: regulator's annual report

- 7.213 Under section 19 of the 2022 Act, the Regulator must publish a report each year about the information it has received as a result of mandatory occurrence reporting. Regulation 36 specifies the information gathered from reports by principal dutyholders adhering to regulation 33 form part of this report.

Mandatory occurrence reporting: client duty on appointment of principal contractor or principal designer

- 7.214 Under regulation 37, when the client appoints the principal designer and principal contractor, they must be satisfied that those appointed will be able to implement, operate and maintain a mandatory occurrence reporting system, and for providing the relevant information about any safety occurrences to the Regulator (regulations 32 and 33).

Handover of information on completion etc

- 7.215 Regulation 31 specifies the information and documents that the client must ensure are added to the golden thread of information throughout the building work on the higher-risk building. The regulation also specifies what information in the golden thread of information must be handed over on completion of building work.

- 7.216 Regulation 38(1) specifies that the client for HRB work, a stage of HRB work or work to existing HRB must give a copy of the specified golden thread information and information relating to fire safety (part B), ventilation (part F), energy (part L) and overheating (part O), collectively known as “BFLO information”, to the relevant person no later than the date the work is completed or if it for a stage of HRB work no later than the date of the part of the building which is to be occupied. Regulation 38(5) defines the relevant person, the specified golden thread information and the FLO information for the purposes of this instrument.
- 7.217 Regulation 38(2) specifies that the client must handover the specified golden thread information (as required under regulation 31(1)) in such a way as to retain the filing structure in which it was kept, including each index, key or other information logically associated with it and in a format which enables the relevant person to read, keep and update the information.
- 7.218 Regulation 38(3) specifies that the relevant person must send the client a notice acknowledging receipt of the golden thread of information which confirms they are able to access the information; and the information provided is sufficient to enable them to understand, operate and maintain the building (and the fire safety systems in it) after the building work in question is complete.
- 7.219 Regulation 38(4) specifies that the requirements of regulation 38(1) do not apply to work to existing HRB which consists only of: scheme work; exempt work; or emergency work. The handover of information related to scheme work is covered under regulation 39.
- 7.220 Regulation 38 (5) defines the relevant person for the purposes of this instrument. A relevant person is defined for both buildings which will be classified as a higher-risk building in occupation as those which will not. If after the building work is completed, the building will not be classified as a higher-risk building (for the purposes of part 4 of the 2022 Act), then the relevant person is the responsible person³. If after the building work is completed, the building will be classified as a higher-risk building (for the purposes of part 4 of the 2022 Act) then the relevant person is the accountable person for the part of the building to which the work relates and the responsible person.
- 7.221 The regulation defines specified golden thread information as the completion certificate application and any other document which accompanied the application. This is with the exception of when the work is a stage of HRB work and regulation 45 (partial completion certificate) applies. Then the specified golden thread information is the partial completion certificate application and any other document which accompanied the application.
- 7.222 The regulation defines BFLO information as meaning the information required under paragraph B (fire safety requirements), paragraph F1(1) (ventilation requirements), paragraph L1, paragraph L2 (conservation of fuel and power requirements) and part O (overheating requirements) of schedule 1 to the Building Regulations 2010.

Information to be provided where work is scheme work

- 7.223 Regulation 39 specifies when a certifier of scheme work must provide fire safety information to the client and the responsible person. Scheme work is defined in the

³ [The Regulations define responsible person as the meaning given in article 3 of the Regulatory Reform \(Fire Safety\) Order 2005.](#)

regulations as meaning building work which is either done through a self-certification scheme or a third-party certification scheme.

- 7.224 Regulation 39(1) specifies that when work to existing HRB consists only of scheme work and part B of schedule 1 (fire safety requirements) to the Building Regulations 2010 imposes a requirement in relation to the work the certifier⁴ of that scheme work must provide fire safety information to the client and the responsible person. The regulation also specifies when this information must be provided. When the building work is in a building, proposed building or extension which is not occupied during the work, the information must be provided no later than due date of completion of the work or the date of occupation of the building, whichever is the earlier. If the building work is in an occupied building, then the information must be provided by the date of completion of the work.
- 7.225 Regulation 39(9) specifies that fire safety information means information which will assist the responsible person to operate and maintain the building with reasonable safety and relates to the design and construction of the building and the services, fittings and equipment provided in or in connection with the building; the design of the change of use and building work to implement it; and, the composition of materials used.
- 7.226 Regulation 39(2) specifies that if fire safety information is provided (under regulation 39(1)) then the responsible person must send the certifier a notice acknowledging receipt of the fire safety information and confirming the information provided is sufficient to enable them to understand, operate and maintain the building (and the fire safety systems in it). The responsible person must also send a copy of that notice at the same time to the client.
- 7.227 Regulation 39(3) and (4) specifies that the certifier must with 7 days of either the date of occupation of the building or completion of the work (whichever is relevant) separately notify the client: confirming that they have given fire safety information to the responsible person, and stating that they have received a notice from the responsible person or where they have not received the notice, stating that steps taken to obtain the notice from the responsible person and the dates they were taken.
- 7.228 Regulation 39(5) specifies that the client must notify the Regulator within 30 days of receiving the notification from the certifier (as required under regulation 39(4)) to confirm receipt of the notification.
- 7.229 Regulation 39(6) specifies that when work to an existing HRB consists only of scheme work and paragraph F1(1) of schedule 1 (ventilation) to the Building Regulations 2010 imposes a requirement in relation to the work, the certifier must provide information to the client and the responsible person. The regulation specifies

⁴ The Regulations define certifier as meaning:

- where the work is described in column 1 of the Table in Schedule 3 to the Building Regulations 2010 and the work is to be carried out by a person described in the corresponding entry in column 2 of that Table, the person carrying out the work; and,
- where the work is described in column 1 of the Table in Schedule 3A to the Building Regulations 2010 and the work is to be inspected by a person described in the corresponding entry in column 2 of that Table who has been appointed by the person intending to carry out the work, the person inspecting the work.

that this information must be provided no later than five days after the work has been completed. The certifier must provide sufficient information to the client and the responsible person 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.

- 7.230 Regulation 39(7) and (8) specifies that when work to an existing HRB consists only of scheme work and paragraph L1 or paragraph L2 of schedule 1 or paragraph L2 (conservation of fuel and power) to the Building Regulations 2010 imposes a requirement in relation to the work, the certifier must provide information to the client and the responsible person. The regulation specifies that this information must be provided no later than five days after the work has been completed. If paragraph L1 applies, the certifier must provide sufficient information to the client and the responsible person 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. If paragraph L2 applies the certifier must provide sufficient information to the client and the responsible person 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.
- 7.231 Regulation 39(9) also sets out the definitions for certifier and responsible person.

Completion certificates

- 7.232 Assessing whether building work complies with relevant requirements of the building regulations is a vital part of building control. As such, the process for applying for a completion certificate, also known as a gateway three application, forms an integral part of the more rigorous regulatory process. This is covered under Part 5 of the Regulations.
- 7.233 Under the new regime, the Regulator, working with local regulators and other specialists as required, will assess the application for a completion certificate against all applicable requirements of the building regulations and issue a decision within a prescribed time limit. Dutyholders must demonstrate the work undertaken complies with requirements and reflects the proposals for which approval was granted.
- 7.234 To ensure a flexible and pragmatic approach, where building work has been fully complete in a part of the building, a partial completion certificate application can be made in relation to that part of the building while further work continues elsewhere. The intention to complete, and subsequently move into occupation, in phases cannot come at the expense of resident safety and that it must not introduce greater risk than only allowing occupation once all building work is complete.
- 7.235 As one of the "hard stops" of the enhanced regime for higher-risk buildings, a completion certificate must be granted by the Regulator before the higher-risk building, or relevant part of the higher-risk building, can move into the next phase of its lifecycle – occupation and use.

Completion certification applications

- 7.236 Regulation 40 sets the procedure and requirements for the submission of completion certificate applications for higher-risk building work.

- 7.237 As set out in regulation 40(1), all completion certificate applications must be made in writing and include certain information such as details of the client, principal contractor and principal designer, a description of the building work and further information about the building, such as height, number of storeys, number of flats and residential units, the location and building use or intended use.
- 7.238 Under regulation 40(2)(f), the completion certificate application must be accompanied by a compliance declaration from the principal designer and principal contractor about the work they have overseen. Where the principal designer and/or the principal contractor has changed during the project, a compliance declaration from the previous principal designer and/or principal contractor should have been submitted to the Regulator for the work they oversaw under regulation 29. If this has not happened, then that compliance declaration should also accompany the application. Regulations 29 and 40(2)(f) work together to ensure there are compliance declarations covering all of the work which has been undertaken. Under regulation 40(3) where there has been a previous principal designer and/or principal contractor and the client was unable to secure a compliance declaration from them, the application must be accompanied by the reason why there is not a compliance declaration. The compliance declarations provided under regulations 29 and 40(2)(f) support the client in making a statement that to the best of their knowledge the completed building work complies with the applicable building regulation requirements. This statement must be included within the completion certificate application under regulation 40(1)(e).
- 7.239 Under regulation 40(1), a further statement, signed by the client and relevant person, must be submitted confirming that the golden thread information has been provided by the client to the relevant person. Relevant person is defined in regulation 38.
- 7.240 Regulation 40(2) sets out the additional plans, documentation, declarations and information that, where relevant, must accompany a completion certificate application.
- 7.241 Regulation 40(4) confirms that the requirements of the regulation do not apply to scheme work, exempt work, or emergency repairs.
- Completion certification applications: validity and time limit*
- 7.242 Regulation 41 mirrors regulations 5, 13 and 22 (validity and time limit regulations for building control approval applications and change control applications).
- 7.243 Regulation 41 specifies the process the Regulator will take to validate a completion certificate application. Regulation 41(3) defines a “valid application” as an application that fulfils the information requirements in regulation 40. Regulation 41(1) requires the Regulator on receipt of a valid completion certificate application to notify the applicant and determine the application within eight weeks beginning with the date the application is received, or a longer period should the Regulator and applicant agree an extension to the statutory time limit.
- 7.244 The eight-week statutory time limit prescribed in regulation 41 aligns with the equivalent period for buildings which are not higher-risk buildings in regulation 17 of the Building Regulations 2010, but maintains the timeframe.
- 7.245 The Regulator is already bound by an eight-week time limit to determine the application and the time taken to validate is contained within the eight-week period.
- 7.246 Regulation 41(2) requires the Regulator on receipt of an invalid completion certificate application to notify the applicant and provide a reason for its invalidity. Where the

applicant is not the client, the Regulator must give a copy of the notice informing the applicant of the decision to the client.

Completion certification applications: consultation

- 7.247 Regulation 42 sets out the statutory consultation between the Regulator and the relevant enforcing authorities for the Fire Safety Order and between the Regulator and the sewerage undertaker.
- 7.248 Considering the nature of higher-risk building work and the new in-occupation regime for higher-risk buildings as brought forward by part 4 of the 2022 Act, the government is requiring an additional statutory consultation point on completion certificate applications. This will enable statutory consultees to provide comments on the as-built building prior to a completion certificate application being determined.
- 7.249 Regulation 42(1) provides for consultation between the Regulator and the relevant enforcing authorities for the Fire Safety Order before a completion certificate application is determined. A consultation is required for HRB work, category A building work to an existing higher-risk building and category B building work to an existing higher-risk building where part B of schedule 1 to the Building Regulations 2010 (fire safety requirements) imposes requirements.
- 7.250 Regulation 42(2) requires the Regulator to provide sufficient plans to show how the proposed higher-risk building work, if carried out in accordance with those plans, will comply with the applicable requirements of part B of schedule 1 to the Building Regulations 2010 (fire safety requirements) and meet the duties to manage the building under the Fire Safety Order. The Regulator must also provide the enforcing authority with the fire and emergency file or the fire safety compliance information, depending on the type of building work proposed. The Fire and emergency file and the fire safety compliance information is explained in greater detail above. These documents contain relevant information with regard to dutyholder consideration of fire safety.
- 7.251 Regulation 42(1) also provides for consultation between the Regulator and the sewerage undertaker before a building control approval application is determined where paragraph H4 of schedule 1 to the Building Regulations 2010 (building over sewers requirements) imposes requirements in relation to the proposed higher-risk building work. As set out in regulation 42(2), the Regulator must provide sufficient plans to show where the proposed higher-risk building work, if carried out in accordance with those plans, comply with the aforementioned requirements.
- 7.252 Regulation 42(2) also requires the Regulator to wait 15 working days from starting the consultation with enforcing authorities or sewerage undertakers before determining a completion certificate application but may agree an extension to this timeframe with statutory consultees.
- 7.253 Regulation 42(4) sets out that if all consultees have responded with their views before the end of the 15 working day period, then the Regulator can proceed to determine the application the day after the views have been received. Furthermore, the regulation prescribes that the Regulator is not required to consult statutory consultees where there are already grounds to reject the application.

Completion certification applications: inspection

- 7.254 Regulation 43 requires the Regulator to inspect the completed building work for the purpose of assessing whether it complies with all applicable requirements of the building regulations before determining a completion certificate application.

Completion certification applications: decisions

- 7.255 Regulation 44(1) sets out where having taken all reasonable steps, the Regulator is satisfied that all relevant requirements of the building regulations have been met, the documents and information submitted with the application are accurate and complete, and the handover of the golden thread information has been completed, the Regulator must approve the completion certificate application.
- 7.256 If the Regulator is not satisfied that these requirements have been met, under regulation 44(2) the completion certificate application must be rejected.
- 7.257 The Regulator must provide the applicant, and the client where the client is not the applicant, with a notice of the decision taken with regards the application within the eight-week period specified in regulation 41. Where the application is rejected, the notice provided must set out the reasons for the rejection.
- 7.258 Under regulation 44(5) where the application is approved, the Regulator must provide a completion certificate alongside the notice of the decision. The completion certificate is evidence, but not conclusive evidence, that all applicable requirements of the building regulations have been met in relation to the work carried out, as stated by regulation 42(7). Fundamental to Dame Judith's reforms and clear accountability, responsibility for demonstrating compliance with the building regulation requirements remains with the principal dutyholders.
- 7.259 Regulation 44(6) requires the client to provide a copy of the completion certificate to the relevant person. The client will have already sent the relevant person a copy of the proposed completion certificate application and accompanying documents under the requirement in regulation 38.
- 7.260 Regulation 44(15) requires the Regulator to provide a paper copy of the completion certificate, if requested by the applicant or relevant person.
- 7.261 Section 76 of the 2022 Act provides that where a new higher-risk building is being constructed or created, it is a criminal offence if a residential unit is occupied before a completion certificate is issued.

Partial completion certificates

- 7.262 Regulation 45 sets out the requirements for partial completion applications. An application can be made for a partial completion certificate where building work in part of the building is complete, and that part is to be occupied before all work across the building has also been finalised.
- 7.263 Regulations 45(2) to (4) explain the requirements for a partial completion application. These requirements include much of the same information required for a completion certificate application under regulation 40, such as principal dutyholder details; building information such as height, number of storeys and location; compliance statements; up to date versions of prescribed documents, plans and details of the work carried out and confirmation that golden thread information has been handed over. In addition to providing details of the completed building work and plans of the part of the building to which the application relates, the application must describe the

building work that remains to be carried out elsewhere in the building and submit a partial completion strategy. Paragraph 6 of schedule 1 describes the partial completion strategy.

- 7.264 Regulation 45(5) provides that where the Regulator receives a valid partial completion application, they must provide the applicant with a notification confirming the application is valid and determine the application within eight weeks from the date on which the application was received. Under regulation 45(5) the Regulator and applicant may agree an extension of the eight-week period. For an application to be valid, it must meet the requirements of regulations 45(2) to (4).
- 7.265 As set out in regulation 45(6), where the application is not valid the Regulator must notify the applicant, and client if they are not the applicant, in writing giving reasons why the application is not valid.
- 7.266 Regulation 45(8) requires that before determining the application, the Regulator must comply with the requirements of regulations 42(1) to (3) with regards to consultation and 43(1) with regards to inspections. Regulation 45(9) makes further modifications with respect to such consultations, as set out in regulation 42, and inspections, as set out in regulation 43.
- 7.267 Regulation 45(10) sets out that, as with completion certificate applications, the Regulator must approve the application if it is satisfied that the work to which the application relates complies with the relevant building regulations requirements, the documents and information submitted with the application are accurate and complete, and the handover of the golden thread of information requirements have been met. If these requirements have not been met, the Regulator must reject the application.
- 7.268 The Regulator must provide the applicant, and the client if they are not the applicant, with a notice of the decision taken with regards the application within the eight-week period specified in regulation 45(5). Where the application is rejected, the notice provided must set out the reasons for the rejection.
- 7.269 Under regulation 45(14) where the application is approved, the Regulator must provide a partial completion certificate alongside the notice of the decision. The partial completion certificate is evidence, but not conclusive evidence, that all applicable requirements of the building regulations have been met in relation to the work carried out, as stated by regulation 45(16). As outlined above for competition certificate, dutyholder accountability is fundamental to the new regime. Responsibility for demonstrating compliance with the building regulation requirements remains with the principal dutyholders.
- 7.270 Regulation 45(18) requires the client to provide a copy of the partial completion certificate application and all accompanying documents as well as, when issued, the partial completion certificate to the relevant person.
- 7.271 Regulation 45(15) requires the Regulator to provide a paper copy of the partial completion certificate, if requested by the applicant or relevant person.
- 7.272 Regulation 45(19) confirms that the requirements of this regulation do not apply to scheme work, exempt work, or emergency repairs.
- 7.273 Section 76 of the 2022 Act provides that where a new higher-risk building is being constructed or created, it is a criminal offence if a residential unit is occupied before a completion certificate relating to that part of the building is issued. Regulation 58 of

this instrument provides that a partial completion certificate is such a completion certificate.

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

- 7.274 Part 6 of the Regulations provides power to the Regulator to inspect work. It also provides a method for gaining retrospective approval for some unauthorised completed building work. It sets out detail for the Regulator reviewing its decisions, the Regulator's decisions being appealed and the process for seeking a decision from the Secretary of State on an application for building control approval when the Regulator fails to make a decision.

Inspections etc

- 7.275 Regulation 46 provides for any building or proposed building for which the Regulator is the building control authority, it can: require an inspection to be taken and the record of the inspection provided, require the laying open of building work for inspection and require information relating to compliance with building regulations. These steps can be taken as frequently as the Regulator considers appropriate to check compliance with all applicable requirements of the building regulations.
- 7.276 These actions ensure the Regulator has sufficient powers to enable them to check the compliance of higher-risk building work and provide robust building control oversight.

Regularisation of unauthorised building work

- 7.277 There are times when building work is done without the proper approvals. Unauthorised higher-risk building work may still take place, for example because it is emergency work, and we do not consider it proportionate for this work to retrospectively go through the full processes of an application for building control approval and completion certificate. Regulation 47 provides a method to retrospectively gain approval for completed building work, known as regularisation.
- 7.278 Regulation 47 largely copies the approach in regulation 18 in the Building Regulations 2010 with adaptations to work with the rest of the higher-risk regime.
- 7.279 Regulation 47(2) sets out that the owner of the property within which the unauthorised building work has taken place may submit a regularisation certificate application and regulation 47(4) sets out what must accompany the application.
- 7.280 Under regulation 47(1) an application can only be submitted for unauthorised building work carried out on or after 11 November 1985. This is the date the original building regulations made under the 1984 Act were commenced and regularisation under the current building regulations can only be requested on work done on or after this date as well.
- 7.281 Under regulation 47(5), the Regulator may require the applicant to provide more information or take other steps in order to help it understand whether the building work complies with applicable building regulations requirements.
- 7.282 If the Regulator is satisfied that the building work complies with the applicable building regulations, then it should issue a regularisation certificate under regulation 47(7). Regulation 47(9) confirms that once a regularisation certificate is received, then parts 2 to 5 of this instrument (which cover building control approval for higher-risk

building work, processes during construction and completion certificate applications) do not apply to the building work.

- 7.283 Within five days of receiving a regularisation certificate, if the applicant is not a domestic client, then the applicant must send information about the building work to the accountable person and/or responsible person under regulation 47(10). The information which must be submitted is set out in regulation 47(11) and aligns with the information which would be sent under regulation 38 (Handover of information on completion etc). The domestic client is exempt from this to align with the general approach taken to minimise duties on domestic clients during design and construction and on residents during occupation. If the domestic client is a leaseholder, then under the conditions of their lease they may need to provide some or all of this information to the accountable person and/or responsible person.
- 7.284 The Regulator can decide that the unauthorised building work may not or does not comply with the applicable building regulations and further building work is needed. If this happens then under regulation 47(6), the Regulator must reject the application. The applicant will need to go through the full approvals process to do this further building work.
- 7.285 Unauthorised building work is defined in regulation 47(13). An entire new building could be submitted for a regularisation certificate through an application under this definition. Should this occur then the Regulator has the power under regulation 47(5) to require the building work is reopened and much more information be submitted as part of determining whether to grant a regularisation certificate. Additionally, those who have done the work are not exempt from the Regulator's enforcement powers as it is an offence to do building work without the proper approvals.
- 7.286 If the building work is part of a project for which building control approval has been granted and the unauthorised work should have been subject to a change control application as it is a major change, then regularisation cannot be used due to regulation 47(3). This is to prevent the regularisation process being used to undermine the processes set out by this instrument.

Review of regulator's decisions

- 7.287 The 2022 Act provide for a right of review for certain decisions made by the Regulator. Regulation 48(1) prescribes the types of decisions that may be subject to a review under section 25 of the 2022 Act. Regulation 48(2) prescribes the persons that can require the Regulator to carry out a review for the purposes of section 25(2) of the 2022 Act.
- 7.288 Regulation 48(4) sets out what the applicant should cover in its notice to request a review including: the details of the person giving the notice, a statement of the review being sought, the reason for the review and any information that is relevant to the review. The notice must be made to the Regulator in writing within 21 working days, beginning with the day after the day on which the decision was notified to the person.
- 7.289 The Regulator must notify the person who required the review within 13 weeks with a decision. If the review upholds the decision, the Regulator under regulation 48(6) must give reasons for the decision. If the review varies the decision, the Regulator must issue a new decision under regulation 48(7).
- 7.290 If requested, under regulation 48(8) the Regulator must provide paper copies of the decision of the review.

Appeal in relation to reviewed decisions

- 7.291 Section 26 of the 2022 Act provides that where a decision is of a type prescribed under section 25 (Regulator reviewing its decisions), then an appeal under section 26 cannot be made against the decision until the review has been carried out. Regulation 49 provides that the appeal under section 26 must be made to the First-tier Tribunal, and regulation 48 sets out the procedural arrangements in regard of who can lodge the appeal, and the grounds for appeal.
- 7.292 Accordingly, regulation 49(2) provides a route of appeal to the First-tier Tribunal where a dutyholder for a building considers that the Regulator's decision was factually erroneous, legally wrong, procedurally flawed, or unreasonable. Regulation 49(1) sets out other procedural arrangements such as the timescale in which the applicant can lodge the appeal, and regulation 49(3) sets out what the tribunal can do on determination.

Section 30A prescribed applications

- 7.293 The Regulator has statutory timescales within which it must decide applications provided for in the Regulations. Section 30A of the 1984 Act provides that if the Regulator does not reach a decision within the timescale, or within an agreed extension to the timescale, applicants in relation to the prescribed applications will be eligible to apply to the Secretary of State for a determination of their original application.
- 7.294 Regulation 50 prescribes the applications to which section 30A applies, namely building control applications, change control applications, completion certificate applications and regularisation applications.

Section 30A applications: procedure

- 7.295 Regulation 51 requires that section 30A applications be made on a form (published by the Secretary of State) by the client of the original application. An application must be made within six weeks of the date on which the Regulator should have issued a decision.
- 7.296 Before submitting a section 30A application to the Secretary of State, applicants must notify the Regulator at least two working days before of their intention to do so. This notice to the Regulator must not be given before the expiry of the period for determining the original prescribed application.
- 7.297 An application form under section 30A must be made in writing to the Secretary of State by the client or someone on behalf of the client on a form together with the following documents: a copy of the original application given to the Regulator (including all documentation that accompanied the application); all information provided to the Regulator in relation that application by the applicant; all correspondence between the applicant and the Regulator in relation to that application; and, a copy of the notice sent to the Regulator informing them of the intention to begin a section 30A application.

Section 30A applications: electronic submissions

- 7.298 Regulation 52 sets out that applicants submitting section 30A applications electronically 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. This deemed consent may be revoked by the applicant giving the Secretary of State two weeks' notice in writing.

Section 30A applications: determinations

- 7.299 Regulation 53 sets out the process of deciding section 30A applications. Under regulation 53(1) section 30A applications are to be determined by written representations. Regulations 53(2) and (3) require the Secretary of State to give the Regulator the opportunity to make written representations in relation to a section 30A application and allows the Secretary of State to also give any other persons the same opportunity. Before determining a section 30A application the Secretary of State may hold meetings with the applicant, the Regulator or any other person and undertake any site visit, testing or inspection as the Secretary of State considers appropriate as set out in regulation 53(5).
- 7.300 Under regulation 53(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 days after the date the notice is given).
- 7.301 The Secretary of State's decision in relation to a non-determination application must be given in writing to the applicant and a copy of the Secretary of State's decision must be sent to the Regulator in line with the requirements of regulations 53(6) and (7).
- 7.302 There is no statutory timescale for the Secretary of State to determine a section 30A application. Section 30A provides a legislative backstop for extremely unusual cases where no decision has been issued and an extension cannot be agreed between the Regulator and applicant. We expect section 30A applications will be seldom used.

Section 30A applications: appointed persons

- 7.303 Regulation 54 gives the Secretary of State the option to appoint a person to determine a section 30A application on their behalf and that at any time before a person appointed under this regulation has determined the application, the Secretary of State may revoke that person's appointment and appoint another person to determine the application instead.
- 7.304 If a new appointment is made the consideration of the application in question must be started afresh. This does not require any person to be given an opportunity to make fresh representations or modify or withdraw representations previously made.
- 7.305 The person appointed under this regulation has the same powers and duties in relation to the determination of a section 30A application as the Secretary of State. 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 applications

- 7.306 Regulation 55 specifies that if a non-determination application has not been made within the six-week period set out in regulation 51, and the Regulator has not otherwise issued a decision in that period, the application is deemed as having been rejected by the Regulator. This is in line with Dame Judith's recommendations building work cannot start until a building control approval application has been granted.

Section 30A applications: appeals

- 7.307 Regulation 56 set out the appeals process for applicants affected by the Secretary of State's decision on section 30A applications. 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 the Secretary of State gives the decision to the applicant.
- 7.308 The First-tier Tribunal may allow an appeal if it is satisfied that the decision appealed against was factually erroneous, legally wrong, procedurally flawed, or unreasonable.
- 7.309 The First-tier Tribunal may quash or vary the decision if it allows an appeal.

Miscellaneous

- 7.310 Part 7 of the Regulations cover miscellaneous subjects such as work which is exempt from the procedural building regulations, further detail about enforcement provisions, consequential amendments to other regulations and transitional provisions.

Exempt work

- 7.311 Regulation 57 sets out that the building work prescribed in schedule 2 is the only work that is exempt from the Regulations.
- 7.312 The prescribed exempt work in schedule 2 is identical to the exempt work prescribed under schedule 4 of the Building Regulations 2010 (Descriptions of Work where no Building Notice of Full Plans Required). The prescribed work does not need to follow the procedural requirements of building regulations. This work is considered routine and of low risk: it includes replacing a shower, providing new fixed cabling and adding light fittings and switches to an existing circuit.

Requirement for completion certificate before occupation and transitional cases

- 7.313 Regulation 58 outlines the requirements for a completion certificate for a higher-risk building or part of a higher-risk building before occupation. It supports the power provided in section 76 of the 2022 Act. Section 76 creates an offence for an accountable person where a higher-risk building is being constructed or created (through a material change of use or extension), or additional units are being added into the higher-risk building, and the accountable person allows occupation of one or more residential unit or more in the higher-risk building without a relevant completion certificate evidencing that the relevant building work complies with all applicable building regulations' requirements. For the construction of a new higher-risk building, the offence is committed if any residential unit is occupied in the building without a completion certificate being issued first. Where the higher-risk building is being created (on a material change of use or extension) then the offence is committed if any of the new residential units are occupied in the building without a completion certificate being issued first. Where additional residential units are being included in the higher-risk building then the offence is committed if any residential units apart from ones that already exist in the building are occupied without a completion certificate being issued first.
- 7.314 Regulation 58(1) defines a completion certificate as a completion certificate issued under regulation 44 of this instrument or a partial completion certificate issued under regulation 45.
- 7.315 Regulation 58 also defines a completion certificate in relation to building work that benefits from the transitional provisions set out in schedule 3 of this

instrument. Regulation 58(4) defines two types of transitional work: “type A” and “type B”.

- 7.316 Regulation 58(4) prescribes that “type A transitional work” is where the work described above is either completed before 1 October 2023 and occupied on or after that date; completed before 6 April 2024 and paragraph 1 of schedule 3 (October 2023: HRB work) or paragraph 12 (From October 2023: work to existing HRB and work to existing HRB) applied to the work but paragraph 3 (October 2023 to April 2024: cases where building control approval lapses before 6 April 2024) and paragraph 4 (October 2023 to April 2024: cases of not sufficiently progressed work where an initial notice is cancelled before 6 April 2024) of that schedule did not apply; or is completed on or after 6 April 2024 and paragraph 7 of schedule 3 (From April 2024: cases where work is to be regarded as sufficiently progressed) applied to the work.
- 7.317 Regulation 58(4) also prescribes that “type B transitional work” is where the work described above is completed on or after 6 April 2024 and either paragraph 5 of schedule 3 (October 2023 to April 2024: cases of sufficiently progressed work where an initial notice is cancelled before 6 April 2024), paragraph 10 of schedule 3 (From April 2024: cases where work has sufficiently progressed but approved inspector is not a registered building control approver), paragraph 11 of schedule 3 (From April 2024: cases where work has sufficiently progressed and then initial notice ceases) applied to the work.
- 7.318 Regulation 58(2) prescribes that for “type A transitional work” certain certificates will satisfy the requirements in section 76 of the 2022 Act to be in possession of a completion certificate before occupation. The specified certificates are a completion certificate issued under regulation 17 of the Building Regulations 2010, a partial completion certificate issued under regulation 17A of the Building Regulations 2010, or a final certificate given by an approved inspector to a local authority in accordance with the Building (Approved Inspectors etc.) Regulations 2010 which is not rejected by the local authority. Building work that benefits from the transitional arrangements will be able to continue under the existing building control regime. Therefore, it is necessary to enable completion certificates and final certificates given under the existing regime to satisfy the requirement for a higher-risk building to hold a completion certificate before the building is occupied.
- 7.319 Regulation 58(3) outlines different requirements for type B transitional work. In these cases, a transfer and completion certificate provided for in paragraphs 5(9), 10(4) or 11(4) of schedule 3, a transfer and partial completion certificate provided for by paragraph 5(9), 10(4) or 11(4) of schedule 3 or a final certificate given by an approved inspector to a local authority in accordance with the Building (Approved Inspectors etc.) Regulations 2010 and not rejected will satisfy the requirement in section 76 of the 2022 Act.
- 7.320 The initial notices covering higher-risk building work that benefits from the transitional provisions may cease to have effect for a variety of reasons including a contravention of building regulations or an approved inspector failing to register to become a building control approver as set-out in the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023. This building work will transfer to the jurisdiction of the Regulator and therefore, will need to apply for a completion certificate or partial completion certificate and receive approval before lawful occupation can be allowed. Considering this work has transferred to the

Regulator, the building work will receive either a “transfer and completion certificate” or a “transfer and partial completion certificate”. Furthermore, this building work may have received a final certificate by an approved inspector or registered building control approver before transferring to the jurisdiction of the Regulator, this will also be permissible for the purposes of section 76 of the 2022 Act.

- 7.321 Regulation 58 prescribes the exact types of completion certificates that will fulfil the requirement for a higher-risk building or part of a higher-risk building to hold a completion certificate before an accountable person can allow lawful occupation.

Electronic submission and directions

- 7.322 Regulation 59 gives the Regulator the power to make a direction as to the way in which certain applications, notices and documents are given to them by dutyholders, including setting out when they must be provided electronically.
- 7.323 The applications, notices and documents are listed in regulation 59(1) and include building control approval applications, prescribed documents, notices before starting on site, requests for approval, commencement notices, notices required by the Regulator, change control applications and notices, notices following a change of client or a change of principal contractor or principal designers, notices reporting a safety occurrence, a notice when scheme work has been done confirming information has been given to the appropriate people, completion certificate applications, partial completion certificate applications, regularisation certificate applications, a notice of review under section 25 of the 2022 Act and certain notices of rate calculations and testing results under the Building Regulations 2010 such as those required under regulation 27A (Fabric energy efficiency rate calculations) and regulation 41 (Sound insulation testing).
- 7.324 Regulation 59(2) sets out that the Regulator must specify the date on which the direction comes into force and that it must be at least five working days after the date the direction is published. Regulation 59(3) outlines that when the direction comes into effect, dutyholders must send in any applications, notices and documents in accordance with the direction.
- 7.325 Regulation 59(4) also provides the power for the Regulator to, by further direction, amend or revoke any direction they have made.

Contravention by the regulator not to be subject to enforcement

- 7.326 Section 35(2) of the 1984 Act allows the Secretary of State by regulations to prescribe that certain duties in building regulations are not criminal offences.
- 7.327 Accordingly, regulation 60 exempts certain duties imposed on the Regulator from enforcement action via section 35 of the 1984 Act or via compliance notices.
- 7.328 The intent of this provision is that the exemptions remain in line with the building control authority duties that have been made exempt in the Building Regulations 2010.

Provisions in relation to which a stop notice may be given

- 7.329 Regulation 61 sets out the list of provisions for which the Regulator is allowed to issue a stop notice for the purposes of section 35C(1)(a) of the 1984 Act (stop notices), as they relate to higher-risk buildings. This is a notice which immediately halts all or some building work on a site and is reserved for serious breaches of the

building regulations presenting a risk of serious harm to people in or about the building.

Local land charges

- 7.330 Regulation 62 prescribes the functions of local authorities under the Local Land Charges Act 1975, as they relate to higher-risk buildings, as a “relevant function” as outlined in paragraph 2(5) of schedule 3 to the 2022 Act. Prescribing these functions means that the Regulator and local authorities will need to co-operate with each other in relation to the function of local authorities under the Local Land Charges Act 1975 in instances where the Regulator is the building control authority.
- 7.331 Regulation 62 makes sure there is a legal duty for sufficient co-operation and sharing of information to assist local authorities in discharging their function of maintaining local land charges registers and to enable local authority searches to continue as they currently do.

Consequential amendments to the Regulatory Reform (Fire Safety) Order 2005

- 7.332 Regulation 63 is a consequential amendment to the Fire Safety Order.
- 7.333 The Fire Safety Order regulates fire safety in occupied buildings in England and Wales and applies to all workplaces and the common parts of buildings containing two or more domestic premises. The 2022 Act introduces amendments to the Fire Safety Order, such as provisions for the sharing of information between responsible persons, including where one responsible person is replaced by another.
- 7.334 Regulation 62 is a consequential amendment to reflect that for higher-risk buildings handover of information is required under regulation 38 and 39 of this instrument and not regulation 38 of the Building Regulations 2010.

Consequential amendments to the Community Infrastructure Levy Regulations 2010

- 7.335 Regulation 64 is a consequential amendment to the Community Infrastructure Levy Regulations 2010.
- 7.336 The Community Infrastructure Levy Regulations 2010 provide for the imposition of a charge known as the Community Infrastructure Levy which is to be levied on the grant of planning permission for development. Regulation 2(1) (interpretation) of the Community Infrastructure Levy Regulations 2010 defines a compliance certificate as a certificate given under regulation 17 (compliance certificates) of the Building Regulations 2010 or section 51 (final certificates) of the 1984 Act. In the Community Infrastructure Levy Regulations 2010, a “compliance certificate” is referenced under regulation 54C (Exemption for self-build housing: completion of development), which is in relation to an exemption to paying the Community Infrastructure Levy for someone building their own home or has commissioned a home from a contractor, housebuilder or sub-contractor. Regulation 54C sets out that following completion of the build, a form must be submitted to the collecting authority within six months of the date of the compliance certificate.
- 7.337 “Compliance certificate” is an umbrella term for completion or final certificates given to building work under the old regime.
- 7.338 Therefore, the amendment in regulation 64 is necessary to make a consequential amendment that widens the definition of “compliance certificate” to include completion certificates as defined in regulation 44.

Consequential amendments to the amendments to the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023

- 7.339 Regulation 65 is a consequential amendment to the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023.
- 7.340 The Responsible Actors Scheme and Prohibitions Regulations establish a Responsible Actors Scheme for developers for the purpose of improving the safety and standard of buildings. Members of the scheme will be required to identify and remediate (or pay for the remediation) of life-critical fire safety defects in residential buildings over 11m in height, which they developed or refurbished in England between 1992 and 2022.
- 7.341 The instrument also establishes prohibitions, which will be used in relation to developers (and persons they control) who are eligible for the Responsible Actors Scheme and opt not to join or comply with the scheme's conditions. The instrument establishes a planning prohibition to prevent a prohibited person carrying out major development, and a building control prohibition that prevents a prohibited person from receiving building control approval.
- 7.342 Consequential amendments are made to regulation 33 of the Responsible Actors Scheme and Prohibitions Regulations, to include building control approvals created under this instrument in relation to higher-risk building work under the list of documents not to be given or received by a building control body to or from a prohibited developer. Similarly, consequential amendments are made to regulations 35, 36(1), and 37 of the Responsible Actors Scheme and Prohibitions Regulations, to reflect the new building control process for higher-risk buildings in the procedural exception to the Responsible Actors Scheme.
- 7.343 Regulation 34A of the Responsible Actors Scheme and Prohibitions Regulations is amended to include an exception to the building control prohibition for emergency repair work to existing higher-risk buildings. This is an equivalent provision to regulation 34 of the Responsible Actos Scheme and Prohibitions Regulations, which provides an exception for emergency repair work in non-higher-risk Buildings.

Schedule 1: Documents

- 7.344 Schedule 1 to the regulations set out the contents of the documents which may be prescribed to accompany a building control approval or completion certificate application.
- 7.345 Paragraph 1 (schedule 1) describes the competence declaration. The competence declaration covers to all the people working on the project, including the principal designer and principal contractor, at the point in time an application for building control approval is submitted to the Regulator. This includes an application for building control approval to construct a new building, a stage of a new building or to carry out building work to an existing building.
- 7.346 The remainder of paragraph 1 (schedule 1) describes the content of competence declaration for the different types of dutyholder who may be working on the project. The regulations which set out the different types of dutyholder and their responsibilities are found in part 2A of the Building Regulations 2010 (inserted by the Building Regulations etc. (Amendment) (England) Regulations 2023).
- 7.347 If the client has appointed multiple designers, they must appoint a principal designer. Similarly, if there are multiple contractors, they must appoint a principal contractor. In this circumstance, they must comply with paragraphs 1(2) and (3) (schedule 1). If the

client has appointed a single person or organisation as either a designer or a contractor, then they must comply with paragraph 1(4) (schedule 1).

- 7.348 The client must state that they have considered whether there was a serious infraction applying to the person or organisation they have appointed within the five years before the appointment took place and any information about their past misconduct, if available. An example of a serious infraction is being convicted of an offence under the 1984 Act. A more detailed explanation of serious infractions can be found in the explanatory memorandum for the Building Regulations etc. (Amendment) (England) Regulations 2023. The client must also state that the individual or organisation being appointed has respectively either the skills, knowledge, experience and behaviours or the organisational capacity to meet the relevant requirements in building regulations, including the functional requirements and the dutyholder requirements. In addition to these statements, the client must declare they are true.
- 7.349 There will be circumstances where individuals or organisations working on the project are not directly appointed by the client. When this happens, the competence declaration must include a statement that the client has been told by the person who appointed another to work on the project that they have asked whether the person they appointed has had a serious infraction within the last five years and considered any available information about a person's past misconduct. In addition to this statement, a statement declaring their truth must also be included.
- 7.350 The client must sign the competence declaration.
- 7.351 A key part of the cultural reforms recommended by Dame Judith was clear responsibility and accountability for the work which takes place. The competence declaration directly supports these reforms by ensuring those responsible for a project have thoroughly considered whether the people they are appointing are capable of undertaking the work they will be accountable for.
- 7.352 Paragraph 2 (schedule 1) describes the construction control plan. The construction control plan sets out how the project will be managed to ensure co-operation between those working on the project and how the project will comply with all applicable building regulations including the functional requirements, golden thread of information, dutyholder and competence requirements.
- 7.353 At the time the construction control plan is submitted to the Regulator, it must include an up-to-date list of the organisations, businesses or sole traders who have been appointed to work on the project. The names of every individual are not required as we did not consider this proportionate.
- 7.354 In addition, the construction control plan must set out the client's policy for reviewing the construction control plan.
- 7.355 Paragraph 3 (schedule 1) describes the change control plan. The change control plan sets out how the procedures for implementing change control on the project will be sufficient and consideration given for how changes will result in continued compliance with the building regulations. It includes how the requirement to keep the change control log updated will be met. The log must include information on all controlled changes and how the changes were assessed.
- 7.356 Paragraph 4 (schedule 1) describes the building regulations compliance statement. This must describe how the building work will meet each of the relevant building regulation requirements and why the approach is appropriate and will ensure

compliance. For example, the building regulations compliance statement could explain why an Approved Document is being used for a project (rather than a British Standard or another approach), and in doing so why the Approved Document method is appropriate for the project. Approved Documents are statutory guidance to the functional requirements of the building regulations.

- 7.357 Under the current system, those submitting plans do not have to explain how they will be complying with building regulations and demonstrate how they have considered all the interplay of the functional requirements and how they apply in a holistic way. There is a culture within the industry of relying upon building control bodies, who regulate their work, to tell those doing the work what they need to do to meet their legal requirements. The introduction of this document shifts the onus for complying with building regulations and understanding how each of the functional requirements apply and work together in a system onto those responsible for the work, supporting the culture change Dame Judith called for.
- 7.358 Paragraph 5 (schedule 1) describes the fire and emergency file. It sets out how the impact of fire spread and structural collapse on the higher-risk building has been considered and how compliance with the related functional requirements was considered as part of the design process. This includes a plan setting out what the local fire and rescue service's requirements are for access and water-supply.
- 7.359 The fire and emergency file also sets out the assumptions which have been made about the intended occupiers of the building, including any characteristics and describes how the owner is intended to manage and maintain the building once it is complete to ensure its safe evacuation.
- 7.360 The intention of the fire and emergency file is to ensure assumptions which have been made about how the building will operate once complete are realistic. Currently, this does not need to be set out.
- 7.361 Paragraph 6 (schedule 1) describes the partial completion strategy. It must be submitted to the Regulator and approved if the intention is to complete building work in part of a building and allow it to become occupied whilst building work continues elsewhere.
- 7.362 The partial completion strategy must cover how the building work for the part of the building proposed to be occupied has been designed to ensure it complies with building regulations whilst building work continues in other areas. For example, if a sprinkler system is proposed across the entire building to comply with the fire building regulation requirements, how has the building work been designed so the sprinkler system operates in the part of the building which they propose to allow to be occupied. This is to ensure the health, safety and wellbeing of those who will occupy these parts of the building and to ensure the part of the building uses resources, such as water and power, efficiently.
- 7.363 The partial completion strategy must also describe how those designing and constructing the building expect the owner of the building, when it is occupied, to manage and maintain the part of the building which will be occupied. This description must cover what assumptions have been made about the people who will occupy the building to ensure the assumptions which have been made and the policies and procedures the building owner is expected to implement are realistic.

Schedule 2: Exempt work

- 7.364 As outlined above, schedule 2 prescribes the type of work that is considered exempt from this instrument. Regulations 2 and 57 of the instrument prescribe that this list of work is “exempt work”.
- 7.365 The prescribed work in schedule 2 is identical to the exempt work prescribed under schedule 4 of the Building Regulations 2010 (Descriptions of Work where no Building Notice of Full Plans Required) which does not need to follow the procedural requirements of building regulations. This work is considered routine and of low-risk and includes replacing a shower, providing new fixed cabling and adding light fittings and switches to an existing circuit.

Schedule 3: Transitional, supplementary and saving provisions

October 2023: HRB work

- 7.366 Paragraph 1 (schedule 3 to this instrument) sets out part of the transitional provisions for higher-risk buildings when the new higher-risk regime comes into force. Specifically, paragraph 1 provides that the transitional provisions of schedule 3 apply where an initial notice describing the higher-risk building work has been given to a local authority before 1 October 2023 and before that date the initial notice is accepted or deemed to be accepted under section 47 of the 1984 Act, or full plans describing such work have been deposited with a local authority before 1 October 2023.
- 7.367 In these transitional cases, paragraph 1(2) provides that on 1 October 2023 the building control authority for these higher-risk buildings will continue to be the local authority rather than becoming the Regulator. Specifically, the duties and functions of local authorities under section 91 of the 1984 Act will continue to apply.
- 7.368 Paragraph 1(3) provides that, in the cases where full plans have been deposited before the start of the new regime then the provisions of parts 2 to 6 of this instrument do not apply to the work and the Building Regulations 2010 continue to apply to the work including any amendments that have been made by the Building Regulations etc. (Amendment) (England) Regulations 2023 subject to the transitional, supplementary and saving provisions in part 4 of those regulations. This means that the building work in these cases will not be subject to the higher-risk regime
- 7.369 Paragraph 1(3) also provides that, in the cases where an initial notice has been given before the start of the new regime then the provisions of parts 2 to 6 of this instrument do not apply to the work, as explained above, and the Building (Approved Inspectors etc.) Regulations 2010 continue to apply to the work including any amendments made by the Building Regulations etc. (Amendment) (England) Regulations 2023 and the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023 subject to the transitional, supplementary and saving provisions in part 4 of both of those regulations. This means that the building work in these cases will not be subject to the higher-risk regime.
- 7.370 Paragraph 1(6) gives the definition of “sufficiently progressed” with regard to different types of in-scope building work. “Sufficiently progressed” sets out the amount of work that must be carried out by the person carrying out the work in order to benefit from the transitional provisions. It is customary for transitional provisions for changes to building regulations to require that, where plans have been deposited with or an initial notice has been given to a local authority, an amount of work is carried out on site before the person carrying out the work can benefit from the

transitional provisions and continue to build out to the requirements of the previous regime. For all previous transitional provisions, the government has used on a definition of “commencement”, which has been provided in guidance. In general, “commenced” has been described in guidance as excavation for strip or trench foundations or for pad footings, digging out and preparation of ground or raft foundations, piling or drainage work specific to the building(s) concerned. This guidance has often led to those carrying out work beginning remedial tasks to claim they have “commenced” and to benefit from the transitional provisions. Therefore, the definition has been strengthened and will ensure persons carrying out in-scope building work demonstrate a sufficient amount of work has been carried out to benefit from the transitional provisions.

- 7.371 Where the building work consists of the construction of a higher-risk building, “sufficiently progressed” is when the pouring of concrete for the permanent placement of the trench, pad or raft foundations or the permanent placement of piling for that building has started. Where the building work consists of work to an existing higher-risk building, work to an existing building that causes it to become a higher-risk building or a material change of use of a building “sufficiently progressed” means the work has started.
- 7.372 Paragraph 1(4) sets out a requirement on the person carrying out the work under the aforementioned cases to notify the local authority not more than five working days after the building work is “sufficiently progressed”. This requirement applies for each individual in-scope building. In the cases where an initial notice has been given to the local authority in relation to in-scope work, the notice that work has “sufficiently progressed” must also be provided to private sector building control. This will ensure the local authority, and where applicable, the private sector building control, is aware when the work has “sufficiently progressed” and will continue to benefit from the transitional provisions.
- 7.373 Paragraph 1(5) also sets out that where the approval provided by a local authority lapses by virtue of section 32 of the 1984 Act (or section 52(2) of that Act for initial notices) and the in-scope building work can no longer benefit from the transitional provisions paragraph 3 of schedule 3 to this instrument applies instead (see below). Section 32 (or 52) provides that a local authority can issue a notice declaring its approval of the plans (the initial notice under section 52) for that work has no effect, if work has not commenced within three years of the plans being deposited (or the initial notice being given). If dutyholders want to continue with this building work, they will be subject to the full higher-risk regime.
- 7.374 As set out in Paragraph 1(1), building work that is subject to paragraph 1, is also subject to the requirements of paragraphs 2, 4, 5, 6, 7, 8, 9, 10 and 11 (schedule 1) which make different provision for different cases. These requirements are explained in greater detail below.

From October 2023: cases where full plans are rejected

- 7.375 Paragraph 2 (schedule 3) sets out the requirements that must be followed where full plans are deposited with a local authority before 1 October 2023, but the local authority rejects those plans on or after the 1 October 2023. This applies to “HRB work” as defined in regulation 2 and explained above and building work to an existing higher-risk building.

- 7.376 In these cases, at the point the local authority rejects the plans, the Regulator is the building control authority in relation to the building work and the higher-risk regime applies. The intent is to make sure that developers are unable to benefit from the transitional arrangements following the submission of plans that are subsequently rejected by the local authority as this would undermine the transitional arrangements.
- 7.377 Paragraph 2(2) sets out that, for these cases, the duties and functions of the Regulator under section 91 of the 1984 Act apply in relation to the higher-risk building or any proposed higher-risk building. It further sets out that parts 2 to 6 of this instrument apply to the building work from the date the plans are rejected by the local authority, with the exception of regulation 47 (Regularisation) which does not apply in relation to any building work that has been carried out before the rejection date. Similarly, a regularisation certificate cannot be applied for, or issued for, this work. Paragraph 2(2) sets out that any reference to regularisation certificate should be ignored in relation to this case. Work carried out ‘at risk’ by the developer prior to the local authority rejecting the plans cannot be regularised by the Regulator after the reject date. In addition, paragraph 2(2) sets out that the Building Regulations 2010, to the extent they apply to higher-risk buildings, apply to the building work from the date the plans are rejected by the local authority.
- 7.378 Paragraph 2(3) prescribes that within 10 working days of the date the local authority rejects the plans, the person intending to carry out the work must notify the Regulator. This is to make them aware that a project in-scope of the higher-risk regime was started under the previous regime and, for work to continue, it must transfer to the jurisdiction of the Regulator through the submission of a building control approval application. The notice must include the contact details of the person carrying out the work, the location of the building, the height and number of storeys of the building as determined in accordance with the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, details of the proposed building work and a description of any existing building where the work consists of work to an existing building and a description of any work carried out before the date the full plans were rejected, including any information related to inspections carried out by the local authority.
- 7.379 With regard to any work carried out before the date the full plans were rejected by the local authority, paragraph 2(4) prescribes that the person who carried out the work or the owner must comply with any notice from the Regulator requiring them within a reasonable time to cut into, lay open or pull down work which prevents the Regulator from ascertaining whether the work contravenes any requirement of the building regulations. Paragraph 2(5) further sets out that for any work carried out prior to the rejection of the full plans, the person who carried out the work must provide the Regulator with such plans as are necessary to show the work complies with building regulations. These requirements ensure the Regulator has sufficient information to fulfil their function as the building control authority.

October 2023 to April 2024: cases where building control approval lapses before 6 April 2024

- 7.380 Paragraph 3 (schedule 3) sets out the requirements that apply where building control approval lapses before 6 April 2024. As set-out in the explanation in paragraph 1, these are the requirements that apply where the approval provided by a local authority lapses by virtue of section 32 of the 1984 Act or an initial notice for the work, or the

part of the notice which relates to the in-scope building work ceases to have effect under section 52(5) of the 1984 Act.

7.381 In these cases, the Regulator is the building control authority in relation to the building work and the higher-risk regime applies. This approach ensures the Regulations are clear that in-scope building work, where plans were submitted three years ago and work has not started, does not benefit from the transitional arrangements in the other paragraphs of schedule 3 and are under the jurisdiction of the Regulator. These projects must submit a building control approval application to continue building work.

7.382 Specifically, paragraph 3 sets out that, for these cases, the duties and functions of the Regulator under section 91 of the 1984 Act apply in relation to the higher-risk building or any proposed higher-risk building. It further sets out that this instrument applies to the building work from the date the building control approval lapsed. In addition, paragraph 3 sets out that the Building Regulations 2010, to the extent they apply to higher-risk buildings, apply to the building work from the date the building control approval lapsed e.g., all the functional requirements, the dutyholder requirements etc..

October 2023 to April 2024: cases of not sufficiently progressed work where an initial notice is cancelled before 6 April 2024

7.383 Paragraph 4 (schedule 3) sets out the requirements that apply where the initial notice for in-scope building work is cancelled before 6 April 2024 and by the cancellation date the work had not “sufficiently progressed”.

7.384 As explained above, paragraph 1 (schedule 1) prescribes the definition of “sufficiently progressed” and this constitutes the amount of work that must be carried out by the person carrying out the work in order to benefit from the transitional provisions. Paragraph 4 (schedule 3) applies only where work has not “sufficiently progressed”. (If the work had sufficiently progressed by the cancellation date, then paragraph 5 (schedule 3) would apply, see below.)

7.385 As set-out in paragraph 4(1), this paragraph applies to building work where the initial notice for the work, or part of that notice which relates to the higher-risk building, ceases to be in force by virtue of any provision of part 2 of the 1984 Act before 6 April 2024 with the exception of the situation where the initial notice lapses. The requirements related to an initial notice lapsing are separate and have been outlined in paragraph 2 (schedule 3), as discussed above.

7.386 For these cases, paragraph 4(2) sets out that, when the initial notice ceases to be in force, any plans certificate (as defined in section 50 of the 1984 Act) or final certificate (as defined in section 51 of the 1984 Act) relating to the work (or any part of the work) ceases to have effect.

7.387 It is important to note that section 48(1) of the 1984 Act is clear that the protection from enforcement set out in sections 48(1) and 51(3) of the 1984 Act applies where the local authority is the building control authority. So, it does not apply where the Regulator is the building control authority for the work. Section 35D(4) of the 1984 Act makes clear that higher-risk building work is not protected from the issue of a compliance notice or stop notice even where building control approval has been granted. It would be for the dutyholder to show the work is compliant not that it is work carried out in accordance with an approval. Therefore, the Regulator may issue

enforcement action for a contravention of building regulations that arises out of the carrying out of that work.

- 7.388 Paragraph 4(2) also sets out that enforcement protection in relation to the Regulator’s enforcement powers will not be provided by final certificates accepted before the initial notice is cancelled. The approach to plans and final certificates ensures that dutyholders transferring to the Regulator can be subject to enforcement action if non-compliance is identified on building work that has already been carried out. This is considered necessary to enable the Regulator to properly oversee building work transferred to its jurisdiction, particularly considering the work is not “sufficiently progressed”.
- 7.389 For these cases, paragraph 4(3) outlines that the duties and functions of the Regulator under section 91 of the 1984 Act apply in relation to the higher-risk building or any proposed higher-risk building. Paragraph 4(2) further sets out that parts 2 to 6 of this instrument apply to the building work from the date the initial notice is cancelled. In addition, paragraph 4(2) sets out that the Building Regulations 2010, to the extent they apply to higher-risk buildings, apply to the building work from the date the initial notice is cancelled. There is one exception to the application of the Building Regulations 2010. Paragraph 4(2) prescribes that regulation 11(3) of the Building Regulations 2010 does not apply for these cases and, as a result, the Regulator may exercise the power in section 8(3A) of the 1984 Act to dispense with or relax any requirement of the Building Regulations 2010. Regulation 11(3) of the Building Regulations 2010 prevents the building control authority from disapplying or relaxing certain energy efficiency requirements in relation to building work they are overseeing. The intent of allowing the Regulator to disapply or relax energy efficiency requirements for these cases is to ensure the Regulator has sufficient flexibility to oversee building work in a proportionate manner. This approach ensures that when the initial notice is cancelled, and the higher-risk regime applies, the Regulator (as the building control authority for the work) can apply the requirements appropriately for the stage and age of the project.
- 7.390 For these cases, paragraph 4(4) prescribes a requirement on the person shown on the initial notice as the approved inspector for the in-scope project to notify the person intending to carry out the work, not more than five working days after the date the initial notice is cancelled, explaining the initial notice, or such part of the initial notice which applies to the higher-risk building is no longer in force. The notice must also explain that the in-scope building work is under the jurisdiction of the Regulator and the higher-risk regime now applies. A copy of this notice must also be sent to the relevant local authority to ensure it is aware the project has transferred to the Regulator.
- 7.391 Furthermore, for these cases, paragraph 4(5) prescribes a requirement on the person intending to carry out the work to notify the Regulator within 10 working days of the date the initial notice is cancelled. This is to make the Regulator aware that a project in-scope of the higher-risk regime was started under the previous regime and for work to continue must transfer to the jurisdiction of the Regulator through the submission of a building control approval application. Paragraph 4(5) sets out that the notice must include their contact details, the location of the building, a statement giving the height and number of storeys of the building as determined in accordance with the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, details of the proposed work and a description of any work which was carried out

before the date the initial notice was cancelled and any details of inspections undertaken by the approved inspector in relation to the building work.

- 7.392 Paragraph 4(6) sets out that from the date the initial notice is cancelled, no further building work in relation to the higher-risk building work described in the initial notice may be carried out until the person intending to carry out building work has submitted a building control approval application to the Regulator and received confirmation from the Regulator that the application is valid. Regulations 5 and 13 of this instrument outline the process and requirements related to the validation of building control approval applications and are explained above. This approach enables dutyholders to continue building work once they have submitted a “valid” application and can continue building work while the Regulator determines the application.
- 7.393 In addition, paragraph 4(7) sets out that where building work is carried out before the initial notice is cancelled, the person who carried out the work or the owner is subject to additional requirements. To enable the Regulator to assess compliance with building regulations, the person who carried out the work or the owner must comply with any notice from the Regulator requiring them within a reasonable time to cut into, lay open or pull down so much of the work as prevents the Regulator from ascertaining whether the work contravenes any requirement of the building regulations. Furthermore, paragraph 4(7) prescribes that the person who carried out the work must provide the Regulator with sufficient plans to show the work already carried out complies with all applicable requirements of the building regulations. This requirement is in addition to the other documents submitted as part of an application for building control approval. These requirements will enable the Regulator to properly oversee building work carried out under the previous regime when the project was overseen by private sector building control.
- 7.394 Paragraph 4(9) sets-out that the requirements in regulations 5 and 13 of this instrument apply as if regulations 5(1)(b) and 13(1)(b) were omitted. This modification removed the 12-week statutory time limit for the Regulator to determine whether the application is approved. This is a necessary change considering that building work can continue on the submission of a valid application and the Regulator has to consider the building control approval application alongside checking building work that has been carried out before the initial notice was cancelled. A consequence of the statutory time limit being removed is that section 30A applications (described above) are unable to be used by dutyholders for applications for building control approval. Paragraph 4 sets out that regulations 50 to 56 (section 30A applications) do not apply in relation to the application for building control approval for work under these cases.
- 7.395 Paragraph 4(9) also prescribes that in relation to any change control proposed or occurring between the date the initial notice was cancelled and the date the application for building control approval is determined must be recorded in the change control log, as defined in regulations 18 and 19 of this instrument. This approach will ensure that while the Regulator is determining the application there is a written record of any changes to the application they submitted to the Regulator, and this can be reviewed by the Regulator before making their determination.
- 7.396 Paragraph 4(9) also sets out that from the date the application is confirmed as “valid” by the Regulator until the date the application is rejected, regulation 3 is modified so that it does not prevent work in these cases from being started before a building control approval application is submitted. This is a necessary modification to prevent

a rejected application from breaching building regulations by starting work before a building control approval application has been approved.

- 7.397 Paragraph 4(8) also prescribes that where a building control approval application in relation to the building work is rejected by the Regulator, from the date it is rejected, no further building work in relation to the project may be carried out until building control approval is granted by the Regulator. This requirement means dutyholders of work that has received a rejection for their building control approval application cannot subsequently submit a new valid application and continue the building work, they must wait for the Regulator to determine the application in line with regulations 7 and 15 of this instrument, as explained above.
- 7.398 As set out above, from the date the initial notice is cancelled parts 2 to 6 of this instrument have effect in relation to projects in these cases. Paragraph 4(9) sets out some further modifications how this instrument applies. Regulation 47 (Regularisation) does not apply in relation to any building work that has been carried out before the date the initial notice was cancelled. Similarly, a regularisation certificate cannot be applied for or issued for this work and therefore, paragraph 4(9) sets out that any reference to regularisation certificate should be ignored in relation to this case.

October 2023 to April 2024: cases of sufficiently progressed work where an initial notice is cancelled before 6 April 2024

- 7.399 Paragraph 5 (schedule 3) sets out the requirements that apply where in-scope building work has “sufficiently progressed”, as defined in paragraph 1 (schedule 3) and an initial notice is cancelled before 6 April 2024.
- 7.400 Paragraph 5(1) applies to building work where the initial notice for the work, or part of that notice which relates to the higher-risk building, ceases to be in force by virtue of any provisions of part 2 of the 1984 Act before 6 April 2024. This means that the paragraph applies where an initial notice is cancelled for any reason and work has “sufficiently progressed”.
- 7.401 For these cases, paragraph 5(2) sets out that, when the initial notice is cancelled, any plans certificate (as defined in section 50 of the 1984 Act) relating to the work (or any part of the work) ceases to have effect. As set out above in relation to paragraph 4, this approach prescribes that where an initial notice ceases to have effect, the plans certificate also ceases to have effect and the Regulator may take enforcement action for a contravention of building regulations that arises out of the carrying out of that work.
- 7.402 Paragraph 5(2) also sets out that enforcement protection will be allowed to continue for final certificates accepted before the initial notice is cancelled. If a final certificate relating to the work (or any part of the work which relates to a higher-risk building) has been accepted before the initial notice is cancelled, the function of enforcing building regulations as set-out in section 91(3) of the 1984 Act cannot be exercised by the Regulator for the work covered by the final certificate. This approach is proportionate because the work has “sufficiently progressed” and the progress of work may be advanced into the construction phase.
- 7.403 For these cases, paragraph 5(3) outlines that the duties and functions of the Regulator under section 91 of the 1984 Act apply in relation to the higher-risk building or any proposed higher-risk building. Paragraph 5(2) sets out that parts 2 to 6 of this

instrument apply to the building work from the date the initial notice is cancelled. In addition, paragraph 5(2) also sets out that the Building Regulations 2010, to the extent they apply to higher-risk buildings, apply to the building work from the date the initial notice is cancelled. There is one exception to the application of the Building Regulations 2010. Paragraph 5(2) prescribes that regulation 11(3) of the Building Regulations 2010 does not apply for these cases and, as a result, the Regulator may exercise the power in section 8(3A) of the 1984 Act to dispense with or relax any requirement of the Building Regulations 2010. Regulation 11(3) of the Building Regulations 2010 prevents the building control authority from disapplying or relaxing certain energy efficiency requirements in relation to building work they are overseeing. The intent of allowing the Regulator to disapply or relax energy efficiency requirements for these cases is to ensure the Regulator has sufficient flexibility to oversee building work in a proportionate manner.

- 7.404 For these cases, paragraph 5(4) prescribes a requirement on the person shown on the initial notice as the approved inspector for the in-scope project to notify the person intending to carry out the work, not more than five working days after the date the initial notice is cancelled, explaining the initial notice, or such part of the initial notice which applies to the higher-risk building, is no longer in force. The notice must also explain that the in-scope building work is under the jurisdiction of the Regulator and the higher-risk regime now applies. A copy of this notice must also be sent to the relevant local authority to ensure it is aware the project has transferred to the Regulator.
- 7.405 Furthermore, for these cases, paragraph 5(5) prescribes a requirement on the person intending to carry out the work to notify the Regulator within 10 working days of the date the initial notice is cancelled. This is to make the Regulator aware that a project in-scope of the higher-risk regime was started under the previous regime and for work to continue must transfer to the jurisdiction of the Regulator through the submission of a building control approval applications. Paragraph 5 sets out that the notice must include their contact details, the location of the building, a statement giving the height and number of storeys of the building as determined in accordance with the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, details of the proposed work and a description of any work which was carried out before the date the initial notice was cancelled and any details of inspections undertaken by the approved inspector in relation to the building work. The notice must also include a description of any work covered by a final certificate that was given and not rejected before the date the initial notice was cancelled.
- 7.406 Paragraph 5(6) sets out that from the date the initial notice is cancelled, no further building work in relation to the higher-risk building work described in the initial notice may be carried out until the person intending to carry out building work has submitted a building control approval application to the Regulator and received confirmation from the Regulator that the application is valid. Regulations 5 and 13 of this instrument outline the process and requirements related to the validation of building control approval applications and are explained above. This approach enables dutyholders to continue building work once they've submitted a valid application and can continue building work while the Regulator determines the application.
- 7.407 Paragraph 5(9) sets out that the requirements in regulations 5 and 13 of this instrument apply as if regulations 5(1)(b) and 13(1)(b) were omitted. This modification removes the 12-week statutory time limit (or eight-weeks with regard to building work in an

existing higher-risk building) for the Regulator to determine whether the application is approved. This is a necessary change considering that building work can continue on the submission of a valid application and the Regulator has to consider the building control approval application alongside checking building work that has been carried out before the initial notice was cancelled. A consequence of the statutory time limit being removed is that section 30A applications (described above) are unable to be used by dutyholders for applications for building control approval. Paragraph 5 (schedule 3) sets out that regulations 50 to 56 (section 30A applications) do not apply in relation to the application for building control approval for work under these cases.

- 7.408 In addition, paragraph 5(7) sets out that where building work is carried out before the initial notice is cancelled, the person who carried out the work or the owner is subject to additional requirements. To enable the Regulator to assess compliance with building regulations, the person who carried out the work or the owner must comply with any notice from the Regulator requiring them within a reasonable time to cut into, lay open or pull down so much of the work as prevents the Regulator from ascertaining whether the work contravenes any requirement of the building regulations. Furthermore, paragraph 5(7) prescribes that the person who carried out the work must provide the Regulator with sufficient plans to show the work already carried out complies with all applicable requirements of the building regulations. This requirement is in addition to the other documents submitted as part of an application for building control approval. These requirements will enable the Regulator to properly oversee building work carried out under the previous regime when the project was overseen by private sector building control.
- 7.409 Paragraph 5(8) also prescribes that where a building control approval application in relation to the building work is rejected by the Regulator then from the date it is rejected, no further building work in relation to the project may be carried out until building control approval is granted by the Regulator. This requirement means dutyholders of work that has received a rejection for their building control approval application cannot subsequently submit a new valid application and continue the building work, they must wait for the Regulator to determine the application in line with regulations 7 and 15 of this instrument, as explained above.
- 7.410 As set out above, from the date the initial notice is cancelled parts 2 to 6 of this instrument have effect in relation to projects in these cases. Paragraph 5(9) sets out some further modifications to how this instrument applies.
- 7.411 Part 2 (building control approval) is modified in relation to work for which a final certificate was previously given before the cancellation date and not rejected. For work covered by a final certificate, the application and prescribed document requirements in regulation 4(1)(e)(viii), 4(2)(b), 12(1)(e)(viii), 12(2)(c) and 12(5) are omitted and the person who carried out the work must provide the Regulator sufficient plans to show the work already carried out complies with all applicable requirements of the building regulations. The person who carried out the work must also provide a copy of the final certificate. Paragraph 5(9) also omits regulation 4(3) so that the requirements in relation to building control approval applications for a stage of HRB work are removed. In addition, for any work covered by a final certificate, regulation 46 of this instrument does not apply, removing the Regulator's powers in relation to inspections.

- 7.412 In relation to any work or proposed work that is not covered by a final certificate, paragraph 5(9) omits paragraphs (iii) to (viii) of regulation 4(2)(b) and paragraphs (ii) to (vi) of regulation 12(2)(c) of this instrument. This means that as part of the building control approval application for “HRB work” and “category A” building work to an existing higher-risk building, considering the work has “sufficiently progressed” when the initial notice was cancelled, all prescribed document requirements do not apply apart from the need to provide a competence declaration and such other plans that are necessary to show that the “HRB work” complies with all applicable requirements of the building regulations. Regulation 12(5) is also omitted to prevent the Regulator from requiring prescribed documents for “category B” building work.
- 7.413 In these cases, considering the work has “sufficiently progressed”, paragraph 5(9) also omits the change control requirements in regulations 18 to 26, the golden thread requirements in regulation 31 and the mandatory occurrence reporting requirements in regulations 32 to 37.
- 7.414 Paragraph 5(9) also modifies the new client requirements under regulation 27 by removing the requirement to record changes of client in the change control log and the requirement to review the construction control plan. These requirements are not necessary considering the change control and prescribed document requirements do not apply to work in these cases. Furthermore, the references to golden thread information in regulation 27 are also omitted to reflect that the golden thread requirements also do not apply for work in these cases. The new client requirements in regulation 27 are explained in full above.
- 7.415 Furthermore paragraph 5(9) omits regulation 29(7) and removes the requirement to record changes of principal dutyholders in the change control log and the requirement to revise the construction control plan. These requirements are not necessary considering the change control and prescribed document requirements do not apply to work in these cases. The change of principal dutyholder requirements in regulation 29 are explained in full above.
- 7.416 As outlined above, the requirements to establish and maintain the golden thread do not apply to work in these cases. As a result, any references to golden thread information in regulation 38 (handover of information on completion etc.), regulation 40 (completion certificate applications), regulation 44 (completion certificate applications: decisions) and regulation 45 (partial completion certificates) are to be considered references to fire safety information, as defined in regulation 39 (Information to be provided where work is scheme work), namely as: information relating to the design and construction of the building and the services, fittings and equipment provided in or in connection with the building; the design of the material change of use and building work to implement it; and, the composition of material used which will assist the responsible person (as defined in article 3 of the Fire Safety Order). With respect to the modifications for this instrument, the fire safety information is to be passed onto the relevant person, which is either the accountable person for the part of the building to which the work relates or the responsible person for the building. This information will support the management of building safety risks in occupation.
- 7.417 With regard to the submission of a completion certificate application, paragraph 5(9) makes modification to the regulations governing this process by changing the references to “completion certificate” and “partial completion certificate” in part 5 of this instrument to “transfer and completion certificate” and “transfer and partial

completion certificate” respectively. Similarly, paragraph 5(9) prescribes that the provisions covering the review of regulator’s decisions (regulation 48) and the non-determinations route of section 30A applications (regulations 50 and 51) apply in reference to the transfer and completion certificate and a transfer and partial completion certificate. The reason for changing the name of the certificate that can be granted to building work in these cases is to make unequivocally clear that this building work began under private sector building control and was transferred to the Regulator after work had “sufficiently progressed”. In these cases, prescribed document requirements were not applied at the building control approval applications. Paragraph 5(9) also makes clear that the prescribed documents are also not required for a completion certificate application or a partial completion certificate application.

- 7.418 As the prescribed documents are not required for building work in these cases. Paragraph 5(9) also sets out that the references to the “fire and emergency file” in parts 2 to 6 of this instrument are a reference to a document setting out the fire safety design principles, concepts and standards applied to the development including sufficient plans to show how the work would comply with part B (fire safety) of schedule 1 to the Building Regulations 2010 in relation to the higher-risk building or proposed higher-risk building.
- 7.419 Paragraph 5(9) also prescribes that regulation 47 (Regularisation) does not apply in relation to any building work that has been carried out before the date the initial notice was cancelled. Similarly, a regularisation certificate cannot be applied for or issued for this work and therefore, paragraph 5 sets out that any reference to regularisation certificate should be ignored in relation to this case.

From April 2024: local authority to notify regulator where work has not sufficiently progressed

- 7.420 Paragraph 6 (schedule 3) prescribes a requirement on a local authority to notify the Regulator where work has not “sufficiently progressed”. The requirement applies only to buildings where full plans have been deposited with the local authority in relation to “HRB work” as defined in regulation 2 of this instrument or building work to an existing higher-risk building. The notice must be issued by a local authority when the local authority has not received a notice that work has “sufficiently progressed” by 6 March 2024.
- 7.421 As explained above, paragraph 1 (schedule 3) prescribes the definition of “sufficiently progressed” and this constitutes the amount of work that must be carried out by the person carrying out the work in order to benefit from the transitional provisions. The purpose of the requirement to notify the Regulator is to ensure the Regulator is made aware of a project that has not yet “sufficiently progressed” work prior to the six-month period ending and may therefore transfer to its jurisdiction on 6 April 2024. The approach gives the opportunity for the local authority, person intending to carry out the work and the Regulator to engage with each other in order to ensure a seamless transition to the jurisdiction of the Regulator.
- 7.422 Paragraph 1 (schedule 3) also prescribes that a notice that must be provided by the person carrying out the work not more than five working days after the building work is “sufficiently progressed”.
- 7.423 The contents of the notification are prescribed in paragraph 6(1). The notice must include the name and address of the building, the contact details of the person carrying out the work, the details of the intended use of the higher-risk building,

including the intended use of each storey; the proposed height and number of storeys of the building as determined in accordance with the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023; the proposed number of flats, residential rooms and commercial units; the provision made for the drainage of the building and the precautions to be taken over a drain, sewer or disposal main to comply with any applicable requirements of paragraph H4 of schedule 1 to the Building Regulation 2010 (building over sewers requirements); the steps taken to comply with any local enactment that applies; and the details of the work carried out together with a summary of the inspections undertaken by the local authority in relation to the work.

From April 2024: cases where work is to be regarded as sufficiently progressed

- 7.424 Paragraph 7 (schedule 3) sets out the requirements that apply from 6 April 2024 where work in-scope of the higher-risk regime previously overseen by a local authority or private sector building control is regarded as “sufficiently progressed” and in the cases where an initial notice was given in relation to the work, the approved inspector who gave the initial notice has become a registered building control approver before 6 April 2024.
- 7.425 As explained above, paragraph 1 (schedule 3) prescribes the definition of “sufficiently progressed” and this constitutes the amount of work that must be carried out by the person carrying out the work in order to benefit from the transitional provisions.
- 7.426 The Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023 requires that an approved inspector registers as a building control approver by 6 April 2024 in order to continue overseeing existing higher-risk building work. As set out in regulation 20 of the aforementioned regulations, an approved inspector’s initial notice is to be treated as notices of a registered building control approver when the approved inspector has become a suitably qualified registered building control approver before 6 April 2024. Further information can be found in the explanatory memorandum for those regulations.
- 7.427 To ensure consistency of the transition to the higher-risk regime and the transition to the registered building control approvers, it is necessary to require that an approved inspector has become a suitably qualified registered building control approver before 6 April 2024 to benefit from the transitional provisions of this instrument and for the work to continue to be overseen by their existing building control body.
- 7.428 For the type of work described above, where full plans have been deposited with the local authority then from 6 April 2024, parts 2 to 6 of this instrument continue to not apply to the work and the Building Regulations 2010 continue to apply to the work subject to the transitional, supplementary and saving provisions in part 4 of the Building Regulations etc. (Amendment) (England) Regulations 2023. This is set out in paragraph 7(2) and means that the building work in these cases has satisfied the requirements of the transitional provisions and will continue to not be subject to the higher-risk regime. Instead, this work will continue under the previous regime as prescribed by the Building Regulations 2010.
- 7.429 As set out in paragraph 7(2), in a case where an initial notice was given in relation to the work by an approved inspector then while the initial notice continues to be in force, the initial notice given by the approved inspector is treated as if it were given by that person in their capacity as a registered building control approver. Furthermore, paragraph 7(2) prescribes that parts 2 to 6 of this instrument continue to not apply to

the work and the Building (Approved Inspectors etc.) Regulations 2010 continue to apply to the work but subject to the transitional, supplementary and saving provisions in part 4 of the Building Regulations etc. (Amendment) (England) Regulations 2023 and part 4 of the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023. This means that the building work in these cases has satisfied the requirements of the transitional provisions and will continue to not be subject to the higher-risk regime. Instead, this work will continue under the previous regime as prescribed by the Building (Approved Inspectors etc.) Regulations 2010.

- 7.430 Furthermore, paragraph 7(3) makes clear that from 6 April 2024, the local authority for the area, and not the Regulator, continue to be the building control authority for these cases and the duties and functions of local authorities under section 91 of the 1984 Act continue to apply in relation to the work. This makes unequivocally clear that this work is not under the jurisdiction of the Regulator and the local authority retains its role as the building control authority of this work.

From April 2024: cases of work not sufficiently progressed with an initial notice

- 7.431 Paragraph 8 prescribes the requirements that apply to building work in-scope of the higher-risk regime subject to an initial notice that has not “sufficiently progressed” by 6 April 2024. (Where for such work the initial notice ceases to be in force before 6 April 2024 then paragraph 4 (schedule 3) applies not paragraph 8). Paragraph 8 sets out that building work in these cases will be subject to the higher-risk regime and the building control authority for this work is the Regulator.
- 7.432 Specifically, paragraph 8 applies to building work where an initial notice has been given to a local authority and is accepted, or deemed accepted, before 1 October 2023, but the notice set out in paragraph 1 (schedule 3) that is required to be given not more than five working days after the building work is “sufficiently progressed” has not been received by a local authority in relation to the building before 6 April 2024.
- 7.433 As explained above, paragraph 1 (schedule 3) prescribes the definition of “sufficiently progressed” and this constitutes the amount of work that must be carried out by the person carrying out the work in order to benefit from the transitional provisions. Paragraph 8 (schedule 3) applies only to work that has not “sufficiently progressed”.
- 7.434 For these cases, from 6 April 2024, the initial notice, or such part of the initial notice which applies to the higher-risk building, ceases to be in force. Paragraph 8(2) provides for the initial notice to cease to have effect from 6 April 2024 where work has not satisfied the definition of “sufficiently progressed”.
- 7.435 Paragraph 8(2) also sets out that, from 6 April 2024, any plans certificate (as defined in section 50 of the 1984 Act) relating to the work (or any part of the work) accepted before 6 April 2024 ceases to have effect. The Regulator may institute proceedings under section 35 of the 1984 Act for a contravention of building regulations that arises out of the carrying out of that work. This approach ensures that a plans certificate cannot protect building work already carried out from being subject to enforcement action if non-compliance is identified by the Regulator.
- 7.436 Paragraph 8(2) also sets out that enforcement protection in relation to the Regulator’s enforcement powers will be provided by final certificates accepted before the initial notice is cancelled. If a final certificate relating to the work (or any part of the work which relates to higher-risk building) has been accepted before the initial notice is

cancelled, the function of enforcing building regulations as set out in section 91(3) of the 1984 Act cannot be exercised for the work covered by the final certificate.

- 7.437 Paragraph 8(3) further sets out that, for these cases, the duties and functions of the Regulator under section 91 of the 1984 Act apply in relation to the higher-risk building or any proposed higher-risk building. In addition, paragraph 8(2) sets out that the Building Regulations 2010, to the extent they apply to higher-risk buildings, apply to the building work from the 6 April 2024. There is one exception to the application of the Building Regulations 2010. Paragraph 8(2) prescribes that regulation 11(3) of the Building Regulations 2010 does not apply for these cases and, as a result, the Regulator may exercise the power in section 8(3A) of the 1984 Act to dispense with or relax any requirement of the Building Regulations 2010. Regulation 11(3) of the Building Regulations 2010 prevents the building control authority from disapplying or relaxing certain energy efficiency requirements in relation to building work they are overseeing. The intent of allowing the Regulator to disapply or relax energy efficiency requirements for these cases is to ensure the Regulator has sufficient flexibility to oversee building work in a proportionate manner.
- 7.438 Furthermore, paragraph 8(4) also sets out that the requirements outlined in paragraph 4(4) to 4(9) (schedule 3), as explained above, also apply to building work in these cases but all references of “cancellation date” are a reference to “6 April 2024”. These provisions prescribe the requirements and processes that must be followed in these cases.

From April 2024: cases of work not sufficiently progressed with full plans

- 7.439 Paragraph 9 (schedule 3) prescribes the requirements that apply to in-scope building work from 6 April 2024 that has received building control approval from the local authority, but which has not “sufficiently progressed”.
- 7.440 As explained above, paragraph 1 (schedule 3) prescribes the definition of “sufficiently progressed” and this constitutes the amount of work that must be carried out by the person carrying out the work in order to benefit from the transitional provisions. Paragraph 9 (schedule 3) applies only for work that has not “sufficiently progressed” and a notice that work has sufficiently progressed as set-out in paragraph 1 (schedule 3) has not been received by a local authority before 6 April 2024.
- 7.441 Paragraph 9(2) sets out that in these cases, from 6 April 2024, the duties and functions of the Regulator under section 91 of the 1984 Act apply in relation to the higher-risk building or any proposed higher-risk building. From 6 April 2024, it is the Regulator, and not the local authority, which is the building control authority for the higher-risk building work specified in the full plans.
- 7.442 Paragraph 9(3) places a requirement on the person intending to carry out the work to notify the Regulator within four weeks beginning with 6 April 2024 informing them that they have a project consisting of higher-risk building work that is under their jurisdiction. The notice must include: the name and address of the building; the contact details of the client and principal dutyholders; details of the proposed building work; the details of the intended use of the building; the height and number of storeys of the building as determined in accordance with the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023; the proposed number of flats, residential rooms and commercial units; the provision to be made for the drainage and the precautions to be taken over a drain, sewer of disposal main to comply with any applicable requirements of paragraph H4 of schedule 1 to the

Building Regulations 2010 (building over sewers requirements); the steps taken to comply with any local enactment that applies; and the details of the work carried out together with a summary of the inspections undertaken by the local authority in relation to the work.

- 7.443 Paragraph 9(4) prescribes that the notice must also be accompanied by sufficient plans of the proposed higher-risk building work; a copy of the commencement notice given to the local authority under regulation 16(1) of the Building Regulations 2010 when work has “commenced” as per current guidance; such other documents or plans provided to the local authority for the purpose of demonstrating compliance with applicable requirements of the building regulations; a statement setting out any conditions imposed on the full plans by the local authority, changes to the full plans agreed with the local authority (including any conditions related to the changes) and any work carried out otherwise than in accordance with the full plans (including otherwise than in accordance with conditions imposed upon the plans); a copy of any report produced by the local authority in relation to any inspection including copies of notes and photographs; and a statement setting out details of any enforcement action taken by the local authority in relation to the work. Paragraph 9(5) also requires the person intending to carry out the work to send a copy of the notice to the local authority.
- 7.444 Paragraph 9(6) also sets out that from 6 April 2024, the Building Regulations 2010, to the extent they apply to higher-risk buildings, apply to the building work. This is subject to the part 4 (transitional, supplementary and saving provisions) of the Building Regulations etc. (Amendment) (England) Regulations 2023 and some additional modifications. Paragraph 9(7) sets out that any reference to a local authority in the aforementioned regulations is to be considered a reference to the Regulator, and regulations 16(3) to 16(5) (Notice of commencement and completion of certain stages of work), 17 (Completion certificates), 17A (Certificate for building occupied before work is completed), 18 (Unauthorised building work), 18A (Appeal against local authority’s refusal to grant certain certificates), 18B (appeal to regulator in relation to certain decisions), 38 (Fire safety information), 39 (Information about ventilation), 40 (Information about use of fuel and power), 40A (Information about systems for on-site generation of electricity) and 40B (Information about overheating) are omitted for work in these cases. These modifications are necessary as the work is subject to the higher-risk regime, the higher-risk regime has put in place separate building control procedural requirements that replace, in full, the aforementioned regulations.
- 7.445 Paragraph 9(6) sets out that some of the provisions in parts 2 to 6 of this instrument apply to the building work from 6 April 2024. The client will not be required to submit an application for building control approval as the full plans approved by the local authority have not lapsed and, as set out above, will send a notice including the information in the plans approved by the local authority. The Regulator will have the power to require notifications for the work as outlined in regulations 8 and 16 of this instrument.
- 7.446 Furthermore, there will be a requirement on the client, or someone on their behalf, to notify the Regulator before work has started (if it has not started on site) and when work has satisfied the definition of commencement set out in the Building Regulations etc. (Amendment) (England) Regulations 2023. These are the requirements set out in regulations 9 and 17 of this instrument.

- 7.447 Change control requirements, including changes of client and principal dutyholders, in regulations 18 to 29 of this instrument will apply to this work, but in relation to the full plans approved by the local authority instead of a building control approval application. Furthermore, some major and notifiable changes as omitted in regulation 26 of this instrument to reflect that an application for building control approval has not been submitted and approved before building work begins. With regard to major changes, a change to any assumption made in the design of a proposed higher-risk building before all the work is completed and a change proposing occupation of any part of the proposed higher-risk building before all the work is completed, are both excluded for work in these cases. With regard to notifiable changes, a change to the construction control plan (other than a change to the schedule of appointments contained within it) and a change to the change control plan are both excluded for work in these cases.
- 7.448 The golden thread requirements as outlined in regulations 31, 38 and 39 apply to work in these cases. However, to enable dutyholders sufficient time to meet the golden thread requirements, with regard to regulation 31, the client will be required to establish the electronic facility for the golden thread within 45 days from 6 April 2024, or before a completion certificate application, or partial completion certificate, is submitted, whichever occurs first.
- 7.449 The mandatory occurrence reporting requirements in regulations 32 to 37 of this instrument will apply with some modifications, again, to enable dutyholders sufficient time to meet the requirements. The requirement to establish a mandatory occurrence reporting system as set out in regulation 32 of this instrument is modified so that the system must be established within 10 days from 6 April 2024. Regulations 33 to 37 are modified so that the references to an “agreed document” are references to the “full plans”.
- 7.450 On completion of building work, completion certificate applications, partial completion certificates and completion certificates in regulations 40 to 45 of this instrument, and the requirement for completion certificate before occupation in regulation 58 of this instrument are applied to work in these cases. This means a completion certificate application or partial completion certificate must be applied for and approved before lawful occupation can take place. The completion certificate requirements in regulation 40 of this instrument are modified so that a construction control plan, change control plan and mandatory occurrence reporting plan are not required as part of a completion certificate. The same requirements are also omitted for partial completion certificate applications.
- 7.451 The inspections requirements in regulation 46 do apply, providing powers to the Regulator in relation to inspections.
- 7.452 Regulations 48 to 56 covering the procedures for reviewing and appealing the decisions of the Regulator also apply, but only in relation to a change control application, a completion certificate application and a partial completion certificate application. Reviews and appeals cannot be brought forward by dutyholders for a building control approval application as this application is not required for work in these cases.
- 7.453 The requirements in relation to electronic submissions and directions apply for work in these cases to ensure there is clarity in how applications and notices are submitted.

- 7.454 Paragraph 9(6) modifies any reference to a “fire and emergency file” as this is a prescribed document requirement that will not be fulfilled for work in these cases. Instead of a “fire and emergency file”, the instrument references a document setting out the fire safety design principles, concepts and standards applied to the development including sufficient plans to show how the work would comply with part B (fire safety) of schedule 1 to the Building Regulations 2010 in relation to the higher-risk building or proposed higher-risk building.
- 7.455 Furthermore, paragraph 9(8) prescribes that where the Regulator receives any document under the requirements of the higher-risk regime that apply to work in these cases, they may require, by notice, the client to provide further information by a certain time specified by the Regulator or may take steps, including tests, to be undertaken by a specified time to demonstrate the work will comply with all applicable requirements of the building regulations. When the Regulator gives a notice, the client must not start or continue the work to which the notice relates for a period of ten days from when the notice is received. This additional requirement is set out in paragraph 9(9).

From April 2024: cases where work has sufficiently progressed but approved inspector is not a registered building control approver

- 7.456 Paragraph 10 (schedule 3) prescribes the requirements that apply to in-scope building work that has “sufficiently progressed” but the approved inspector has not become a registered building control approver by the 6 April 2024.
- 7.457 As explained above, paragraph 1 (schedule 3) prescribes the definition of “sufficiently progressed” and this constitutes the amount of work that must be carried out by the person carrying out the work in order to benefit from the transitional provisions. Paragraph 10 applies to building work that has sufficiently progressed, where the initial notice for the work, or part of that notice which relates to the higher-risk building, ceases to be in force by virtue of the approved inspector not registering as a registered building control approver.
- 7.458 Paragraph 10(2) (schedule 3) sets out that where an approved inspector has not registered, the initial notice, or such part of the initial notice which applies to the higher-risk building, ceases to be in force on 6 April 2024. Section 47(4)(b)(ii) of the 1984 Act outlines that an initial notice continues in force until it is cancelled, in whole or in part. This provides for the initial notice to cease to have effect from 6 April 2024 where an approved inspector has not registered as a registered building control approver. This approach is in line with the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023 which provides further technical detail on the transition from the approved inspector regime to the registered building control approver regime. Further information can be found in the explanatory memorandum for those regulations.
- 7.459 For these cases, paragraph 10(2) also sets out that any plans certificate (as defined in section 50 of the 1984 Act) relating to the work (or any part of the work) accepted before 6 April 2024 ceases to have effect. The Regulator may take enforcement action for a contravention of building regulations that arises out of the carrying out of that work. This approach ensures that a plans certificate cannot protect building work already carried out from being subject to enforcement action if non-compliance is identified by the Regulator.

- 7.460 Paragraph 10(2) also sets out that enforcement protection in relation to the Regulator’s enforcement powers will be provided by final certificates accepted before the initial notice is cancelled. If a final certificate relating to the work (or any part of the work which relates to higher-risk building) has been accepted before the initial notice ceases to have effect, the function of enforcing building regulations as set out in section 91(3) of the 1984 Act cannot be exercised for the work covered by the final certificate.
- 7.461 For these cases, paragraph 10(3) outlines that the duties and functions of the Regulator under section 91 of the 1984 Act applies in relation to the higher-risk building or any proposed higher-risk building. Paragraph 10(2) further sets out that parts 2 to 6 of this instrument apply to the building work from the date the initial notice is cancelled with the modifications provided for in paragraph 5(9) and explained above. In addition, paragraph 10(2) sets out that the Building Regulations 2010, to the extent they apply to higher-risk buildings, apply to the building work from the date the initial notice ceases to have effect. There is one exception to the application of the Building Regulations 2010. Paragraph 10(2) prescribes that regulation 11(3) of the Building Regulations 2010 does not apply for these cases and, as a result, the Regulator may exercise the power in section 8(3A) of the 1984 Act to dispense with or relax any requirement of the Building Regulations 2010. Regulation 11(3) of the Building Regulations 2010 prevents the building control authority from disapplying or relaxing certain energy efficiency requirements in relation to building work they are overseeing. When the initial notice is cancelled and the higher-risk regime applies, the Regulator (as the building control authority for the work) can apply the requirements appropriately for the stage and age of the project.
- 7.462 Furthermore, paragraph 10(4) also sets out that the requirements outlined in paragraph 5(4) to 5(9) (schedule 3), as explained above, also apply to building work in these cases but as if any reference to the cancellation date was a reference to 6 April 2024. These provisions, as explained above, prescribe the requirements and processes that must be followed in these cases.

From April 2024: cases where work has sufficiently progressed and then initial notice ceases

- 7.463 Paragraph 11 (schedule 3) prescribes the requirements that apply to in-scope building work that has “sufficiently progressed” but the initial notice ceases to have effect after 6 April 2024.
- 7.464 As explained above, paragraph 1 (schedule 1) prescribes the definition of “sufficiently progressed” and this constitutes the amount of work that must be carried out by the person carrying out the work in order to benefit from the transitional provisions. Paragraph 4 (schedule 3) applies only for work that has not “sufficiently progressed”.
- 7.465 Paragraph 11 applies to building work where the initial notice for the work, or part of that notice which relates to the higher-risk building, ceases to be in force by virtue of any provisions of part 2 of the 1984 Act after 6 April 2024. This means that the paragraph applies where an initial notice is cancelled for any reason and work has “sufficiently progressed”.
- 7.466 For these cases, paragraph 11(2) prescribes that any plans certificate (as defined in section 50 of the 1984 Act) relating to the work (or any part of the work) accepted before 6 April 2024 ceases to have effect. The Regulator may institute proceedings take enforcement action for a contravention of building regulations that arises out of

the carrying out of that work. This approach ensures that a plans certificate cannot protect building work already carried out from being subject to enforcement action if non-compliance is identified by the Regulator.

- 7.467 Paragraph 11(2) also sets out that enforcement protection in relation to the Regulator's enforcement powers will be provided by final certificates accepted before the initial notice is cancelled. If a final certificate relating to the work (or any part of the work which relates to a higher-risk building) has been accepted before the initial notice is cancelled, the function of enforcing building regulations as set-out in section 91(3) of the 1984 Act cannot be exercised for the work covered by the final certificate.
- 7.468 For these cases, paragraph 11(3) outlines that the duties and functions of the Regulator under section 91 of the 1984 Act apply in relation to the higher-risk building or any proposed higher-risk building. Paragraph 11(2) further sets out that parts 2 to 6 of this instrument apply to the building work with the modifications provided for in paragraph 5(9) (schedule 3) and explained above from the date the initial notice is cancelled. In addition, paragraph 11(2) sets out that the Building Regulations 2010, to the extent they apply to higher-risk buildings, apply to the building work from the date the initial notice is cancelled. There is one exception to the application of the Building Regulations 2010. Paragraph 11(2) prescribes that regulation 11(3) of the Building Regulations 2010 does not apply for these cases and, as a result, the Regulator may exercise the power in section 8(3A) of the 1984 Act to dispense with or relax any requirement of the Building Regulations 2010. Regulation 11(3) of the Building Regulations 2010 prevents the building control authority from disapplying or relaxing certain energy efficiency requirements in relation to building work they are overseeing. When the initial notice is cancelled and the higher-risk regime applies, the Regulator (as the building control authority for the work) can apply the requirements appropriately for the stage and age of the project.
- 7.469 Furthermore, paragraph 11 also sets out that the requirements outlined in paragraph 5(4) to 5(9) (schedule 3), as explained above, also apply to building work in these cases. These provisions, as explained above, prescribe the requirements and processes that must be followed in these cases.

Contravention of certain provisions not to be an offence etc

- 7.470 Paragraph 12 (schedule 3) prescribes that certain requirements under the transitional provisions are not to be an offence under section 35(1) of the 1984 Act.
- 7.471 As set out in paragraph 12(1), the requirement on the local authority to notify the Regulator where work has not "sufficiently progressed" as outlined in paragraph 6 (schedule 3) is a contravention that is not to be considered an offence under section 35(1) of the 1984 Act. Furthermore, for the aforementioned requirement, a compliance notice may not be given under section 35B of the 1984 Act. A compliance notice is a notice which can be served on a person who is contravening, or is likely to contravene, building regulations or a requirement imposed under building regulations. The notice will require the person to remedy the contravention or to take steps detailed in the notice within the specified period.
- 7.472 It is not considered appropriate for the Regulator to be enforcing against a local authority for failing to satisfy this requirement.
- 7.473 As set-out in paragraph 12(2), the requirement on the approved inspector or registered building control approver, as set-out in paragraphs 4(4) and 5(4) (schedule 3), to

notify the person carrying out the work not more than five working days after an initial notice is cancelled, explaining the initial notice, or such part of the initial notice which applies to the higher-risk building is no longer in force and the work is now under the jurisdiction of the Regulator is a contravention that is not to be considered an offence under section 35(1) of the 1984 Act. Furthermore, for the aforementioned requirement, a compliance notice may not be given under section 35B of the 1984 Act.

- 7.474 It is not considered appropriate for the Regulator to be enforcing against private sector building control for failing to satisfy this requirement.

Interpretation

- 7.475 Paragraph 13(1) (schedule 3) sets out a number of definitions. It further sets out in paragraph 13(2) and 13(3) that any reference to an initial notice as varied by an amendment notice given under section 51A of the 1984 Act which has been accepted, unless it has been given on or after 1 October 2023 and is such that the work as varied becomes higher-risk building work.

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 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 We conducted a 12-week public consultation between 20 July and 12 October 2022 (Consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings⁵).
- 10.2 The consultation covered proposals found in this instrument and the Building Regulations etc. (Amendment) (England) Regulations 2023.
- 10.3 The consultation complied with the duty on the Secretary of State in section 14 of the 1984 Act to consult with the Building Regulations Advisory Committee for England (section 14 was repealed recently with savings for consultations already undertaken or in progress) and other representative interests on proposed changes to the substantive requirements in building regulations. In relation to the provisions made under the 2022 Act the consultation was undertaken with the Regulator and other persons the Secretary of State considered appropriate as required by section 7 of the 2022 Act.
- 10.4 Responses to the consultation were received online and via email. Responses came from a range of stakeholders including building control bodies, fire and rescue authorities, trade representation organisations, developers, architects, surveyors and asset management companies.

⁵ [Consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings](#)

- 10.5 Overall, respondents agreed with our proposals. Respondents commented that extensive guidance from the government and the Regulator would be required to ensure compliance with the new building control regime.
- 10.6 We have considered all feedback from respondents to decide on the final policy position across all the policies. Where necessary we have amended or omitted provisions in response to further considered and respondents' feedback. A full government response to the consultation has been published at the same time as this instrument⁶.
- 10.7 This instrument only applies to building work done in England and therefore consultation with the devolved administrations was not necessary.

11. Guidance

- 11.1 The Regulator will set out guidance to support meeting the requirements brought in by this statutory instrument.

12. Impact

- 12.1 A full and joint impact assessment has been prepared for this instrument and the Building Regulations etc. (Amendment) (England) Regulations 2023 and is published at the same time as this instrument.
- 12.2 It is not possible to separate the impact from this instrument and the Building Regulations etc. (Amendment) (England) Regulations 2023. There will be an impact from both these instruments on business, charities or voluntary bodies and the public sector. The Department has estimated the total costs of these instruments and this assessment shows that the estimated equivalent annual cost of the new building control regime is £102.0 million to £152.9 million, with a central estimate of £127.2 million.
- 12.3 The costs of delivering the new regime for higher-risk buildings in design and construction fall initially to those organisations responsible for designing, constructing and managing higher-risk buildings and the Regulator. The Regulator intends to recover most of their costs from industry via cost recovery.
- 12.4 The benefits of the new regime for higher-risk buildings have been estimated collectively across all measures in part 3 (alterations to the 1984 Act) and part 4 (occupation part of the regime for higher-risk buildings) of the Act. We estimate that the proposals will yield equivalent annual benefits of £95.6 million to £416.5 million per annum in monetised benefits. These benefits are realised through reducing the risk of fire incidents, avoiding the costs of solving systemic issues, reducing the risk of structural issues and indirect benefits to the construction industry. There are also non-monetised benefits created by the new higher-risk regime. These include mitigating negative mental health and wellbeing impacts arising from any existing concerns as to the safety of people's homes, better functioning mortgage and insurance markets, as there will be greater confidence that higher-risk buildings are constructed correctly, and greater transparency in construction.
- 12.5 This instrument falls within the Better Regulation Framework exclusion because they relate to the safety of tenants, residents and occupants in buildings.

⁶ [Government response to the consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings](#)

12.6 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

13.1 The legislation applies to activities of anyone who carried out building work including small businesses as small businesses are often involved in building work.

13.2 No specific action is proposed to minimise the instrument's burden on small businesses as the costs relate to enduring building safety.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements 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 Isla Mackenzie at the Department for Levelling Up, Housing and Communities email: isla.mackenzie@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Camilla Sheldon, Deputy Director for Regulation Policy, Legislation and Sponsorship, 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 for Local Government and Building Safety, Lee Rowley MP, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.