

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 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.

- 6.2 The 2022 Act establishes a new more stringent building safety regime for higher-risk buildings and provides for the Regulator to be the only building control authority for higher-risk buildings in England.
- 6.3 Higher-risk buildings are defined in section 120D the 1984 Act and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023.
- 6.4 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.
- 6.5 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 Report¹.
- 7.2 The 2022 Act also 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, introduces the new building control regime for higher-risk buildings.
- 7.3 The provisions in this instrument apply to higher-risk buildings. Under the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, 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.).
- 7.4 Regulation 1 of the instrument sets out the commencement, citations etc and regulation 2 sets out a number of new definitions.
- 7.5 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".

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

7.6 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

7.7 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.

Building control approval for HRB work or stage of HRB work

7.8 The process for applying for building control approval and the Regulator considering the application is set out in regulations 3 to 7.

7.9 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. The client is responsible for ensuring this happens. This introduces a new “hard stop”. Where there are 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.

7.10 Regulation 4 sets out the requirements related to 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 as a result of the work. A stage of work is a stage of construction on an individual higher-risk building.

7.11 Under the staged approach, 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. The documents and information which form the application for building control approval for the first stage should be modified to show how the first stage will comply with the relevant building regulations requirements rather than how all the building work for the project will comply.

7.12 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.

7.13 Regulation 5 specifies the process the Regulator will take to validate a building control approval application for HRB work or a stage of HRB work and a 12-week statutory time limit for the Regulator to determine the application.

7.14 Regulation 6 sets out the requirements for statutory consultation between the Regulator and the relevant enforcing authorities for the Regulatory Reform (Fire Safety) Order 2005 (Fire Safety Order) and between the Regulator and the sewerage undertaker.

- 7.15 Regulation 7 sets out the process for the Regulator determining a building control approval application for HRB work or a stage of HRB work and what it must do upon making a decision.
- 7.16 Regulation 7 stipulates that the Regulator must approve an application unless the application is invalid, 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. If one or more of these reasons applies to the application, the Regulator may either reject the application or, with the agreement of the applicant, approve it subject to requirements.
- 7.17 The types of requirements the Regulator may agree with the applicant are to 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.

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

- 7.18 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"

- 7.19 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". For higher-risk building work this replaces a requirement in the Building Regulations 2010.
- 7.20 Under regulation 9 the client must notify the Regulator of their intention to start work on site at least five working days before the building work starts and state the date on which the work is to start. The requirement will provide the Regulator with sufficient forewarning before the construction phase begins.
- 7.21 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. Once building work is commenced, the building control approval the building work is covered under will not automatically lapse after three years. "Commenced" is defined 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 2023).
- 7.22 Upon receiving 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". If the Regulator rejects the commencement notice, the client may appeal the Regulator's decision with the First-tier Tribunal within 21 days of receiving the rejection.

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

- 7.23 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). Such scheme work will continue to be allowed in higher-risk buildings, under the supervision of the Regulator.

- 7.24 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 relevant to the size and scale of the building work being undertaken.

Notification of emergency work to existing HRB

- 7.25 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

- 7.26 The process for applying for building control approval for work to an existing HRB and the Regulator considering the application is set out in regulations 11 to 15. These regulations mirror regulation 3 to 7 with some adaptations to reflect the potential for the building work to be smaller in scale.
- 7.27 Regulation 11 sets out that before building work to an existing HRB, an application must be submitted to, and approved by, the Regulator. The client is responsible for ensuring this happens. This introduces a new “hard stop”. Where there are 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.
- 7.28 Regulation 12 sets out the requirements for a building control approval application for work to an existing HRB. The requirements include details of the proposed work as well as the current higher-risk building.
- 7.29 Regulation 12 sets out two categories of building work. Category A work is more significant, including changing the number of floors in the building and changing the number of flats. Category B work is building work not covered by category A. Depending upon whether the building work is category A or category B, the prescribed documents required as part of the application vary. This reflects how much the scale of work to an existing HRB can vary. The prescribed documents are described in Schedule 1.
- 7.30 Regulation 13 specifies the process the Regulator will take to validate a building control approval application for work to an existing HRB work and an eight-week statutory time limit for the Regulator to determine the application.
- 7.31 Regulation 14 sets out the requirements for statutory consultation between the Regulator and the relevant enforcing authorities for the Fire Safety Order and between the Regulator and the sewerage undertaker.

- 7.32 Regulation 15 sets out the process for the Regulator determining a building control approval application for HRB work or a stage of HRB work and what it must do upon making a decision.
- 7.33 Regulation 15 stipulates that the Regulator must approve an application unless the application is invalid, 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. If one or more of these reasons applies to the application, the Regulator may either reject the application or, with the agreement or the applicant, approve it subject to requirements.
- 7.34 The types of requirements the Regulator may agree with the applicant are to 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.

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

- 7.35 Regulation 16 sets out that the Regulator may 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"

- 7.36 Regulation 17 makes provision equivalent to the requirements of regulation 9, but in relation to building work in an existing higher-risk building. It places a requirement on the client to notify the Regulator twice, first when work starts on site and then when work is "commenced".

Changes before or during construction

- 7.37 Part 3 of the instrument concerns changes to the work or the dutyholders following an application for building control approval being granted.

Change control

- 7.38 Regulations 18 to 26 establish the change control procedures, where there is to be a change to how a project is managed or to what is being constructed compared to what was approved through a building control approval application.
- 7.39 Regulation 18 describes the different aspects of the change control procedures for the three types of controlled change: recorded, notifiable and major; and what may be done if several related changes are proposed simultaneously.
- 7.40 A recorded change is any change which is not a notifiable or major change. Before a recorded change can be made, it must be recorded in the change control log. Regulation 19 sets out that the principal contractor is responsible for the log and describes the information which must be included within it. The information within the change control log demonstrates that the change has been considered and compliance with the relevant building regulations will continue.
- 7.41 Notifiable changes are defined in regulation 26. Before implementing a notifiable change (and any work which relates to it), 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 and the Regulator's ability to request further information are described by regulation 20.

- 7.42 Major changes are defined in regulation 26. Before implementing a major change, 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). Regulation 21 describes the contents of a change control application. Regulations 22 to 24 describe what the Regulator must do as part of considering a change control application, including the validation process, a six-week statutory time limit for determining the application, consultation requirements, and the process for the Regulator determining a completion certificate application and what it must do upon making a decision.
- 7.43 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.

New client etc

- 7.44 Regulation 27 prescribes the process that must be followed when there is a change to the client for 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.
- 7.45 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.
- 7.46 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.

Insolvency etc of the client: notification

- 7.47 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. 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.

New principal contractor or principal designer etc: notification

- 7.48 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 to ensure that 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).
- 7.49 Regulation 29 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 building work contained within an individual dwelling.

Variation of a requirement imposed on a building control approval

- 7.50 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.

Golden thread, mandatory occurrence reporting, information handover etc

- 7.51 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.

Golden thread

- 7.52 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. It also specifies that this golden thread of information must be kept in an electronic format, accurate, up to date, secure from unauthorised access, able to be transferred electronically to others and available in a readable format which is intelligible to the intended readers. As far as is reasonably practicable the client should ensure the language, terminology and definitions in the golden thread of information are consistent.
- 7.53 This regulation does 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.

Mandatory occurrence reporting

- 7.54 Regulations 32 to 37 concern mandatory occurrence reporting.

- 7.55 Regulation 32 makes it a requirement for the principal dutyholders to set up a mandatory occurrence reporting system before construction starts and maintain it throughout construction. The system must allow for prompt reporting of safety occurrences and those working on the project or visiting the site must be provided with sufficient information to enable them to use the system. The principal contractor and principal designer should do inspections of the building work and design work respectively for safety occurrences once construction has started.
- 7.56 Regulation 33 prescribes how safety occurrences must be reported to the Regulator by principal dutyholders and the information which must be provided.
- 7.57 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.
- 7.58 Regulation 35 provides definitions for terms used in the mandatory occurrence reporting regulations including construction phase, safety occurrence, HRB design work and reporting person.
- 7.59 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 that form part of this report.
- 7.60 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 provide the relevant information about any safety occurrences to the Regulator (regulations 32 and 33).

Handover of information on completion etc

- 7.61 Regulation 38 specifies that the client for HRB work, a stage of HRB work or work to an existing HRB must give a copy of the specified golden thread information and information relating to fire safety (part B²), 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 that part of the building is to be occupied. Regulation 38 defines the relevant person, the specified golden thread information and the BFLO information for the purposes of this instrument.
- 7.62 The client must handover the specified golden thread information 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 the information must be provided in a format which enables the relevant person to read, keep and update the information.
- 7.63 The “BFLO” information does not need to be handed over when the building work is work to an 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.

² The functional requirements of the building regulations are prescribed in Schedule 1 of the Building Regulations 2010. Each functional requirement is denoted by a part. For example, Part A is structure.

Information to be provided where work is scheme work

- 7.64 Regulation 39 specifies when a certifier³ of scheme work must provide fire safety information to the client and the Responsible Person and what they must do upon receiving the information. Scheme work is defined in the regulations as meaning building work which is either done through a self-certification scheme or a third-party certification scheme.

Completion certificates

- 7.65 Assessing whether building work complies with relevant requirements of the building regulations is a vital part of building control. The process for applying for a completion certificate, also known as a gateway three, forms an integral part of the more rigorous regulatory process. This is covered under Part 5 of the Regulations.

Completion certificates

- 7.66 Regulations 40 to 44 concern completion certificates.
- 7.67 Regulation 40 sets out the procedure and requirements for the submission of completion certificate applications for higher-risk building work. A completion certificate application must contain information about the “as built” building work, rather than how it was originally designed.
- 7.68 Regulation 41 mirrors regulations 5, 13 and 22 (validity and time limit regulations for building control approval applications and change control applications). It sets out the requirements for a completion certificate application to be valid and an eight-week statutory time limit for the Regulator to determine the application.
- 7.69 Regulation 42 sets out the requirements for statutory consultation between the Regulator and the relevant enforcing authorities for the Fire Safety Order and between the Regulator and the sewerage undertaker. It mirrors regulations 6, 14 and 23 (consultations on building control approval applications and change control applications).
- 7.70 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.
- 7.71 Regulation 44 sets out the process for the Regulator determining a completion certificate application and what it must do upon making a decision.

Partial completion certificates

- 7.72 Regulation 45 sets out the requirements for partial completion certificate applications. An application can be made for a partial completion certificate where building work

³ 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.

in part of the building is complete, and that part is to be occupied before all work across the building has been finalised.

- 7.73 Regulation 45 sets out the requirements for a partial completion certificate application. The majority of the information is the same as is required for a completion certificate application under regulation 40. The partial completion certificate application must also describe the building work which remains to be completed and submit a partial completion strategy. Paragraph 6 of Schedule 1 describes the partial completion strategy.
- 7.74 Regulation 45 also sets out the procedural requirements for the Regulator deciding whether the application is valid and determining it. The procedure is similar to that for completion certificate applications with modifications to reflect that is a partial completion certificate application.

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

- 7.75 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 related 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

- 7.76 Regulation 46 provides powers to the Regulator to enable them to check the compliance of higher-risk building work. For example, the Regulator is able to require the laying open of building work for inspection.

Regularisation of unauthorised building work

- 7.77 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 it is not considered 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. 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.
- 7.78 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. This is to prevent the regularisation process being used to undermine the processes set out by this instrument.

Review of regulator's decisions

- 7.79 The 2022 Act provides for a right of internal review for certain decisions made by the Regulator. Regulation 48 prescribes which decisions can be reviewed and by whom. It also sets out procedural details for this process.

Appeal in relation to reviewed decisions

- 7.80 Regulation 49 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. It also sets out procedural details and what the tribunal can do on determination. This appeal may only be made following the Regulator undertaking an internal review of its decision.

Section 30A applications

- 7.81 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 able to apply to the Secretary of State for a determination of their original application.
- 7.82 Regulations 50 to 54 provide detail about section 30A applications. This includes: which applications in this instrument section 30A applies to; the procedure for making a section 30A application; how an applicant consents to electronic communications or rescinds that consent; the process for the Secretary of State to determine a section 30A application; and, the ability for the Secretary of State to appoint a person to determine a section 30A application on their behalf and to revoke that appointment.

Deemed rejection of applications

- 7.83 Regulation 55 specifies that if a section 30A application has not been made within the time 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.

Section 30A applications: appeals

- 7.84 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 must be made within 21 relevant days beginning with the day after the day the Secretary of State gives the decision to the applicant.
- 7.85 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.
- 7.86 The First-tier Tribunal may quash or vary the decision if it allows an appeal.

Miscellaneous

- 7.87 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

- 7.88 Regulation 57 sets out that the building work prescribed in Schedule 2 is the only building work that is exempt from the Regulations.

Requirement for completion certificate before occupation and transitional cases

- 7.89 Under the 2022 Act, it is an offence if any new residential unit in a higher-risk building is occupied without a completion certificate being issued first. 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, including is the building work has been subject to the transitional provisions set out in schedule 3.

Electronic submission and directions

- 7.90 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. It also provides the power for the Regulator to amend or revoke any direction they have made.

Contravention by the regulator not to be subject to enforcement

- 7.91 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. Accordingly, regulation 60 exempts certain duties imposed on the Regulator from enforcement action via section 35 of the 1984 Act or via compliance notices.

Provisions in relation to which a stop notice may be given

- 7.92 Regulation 61 sets out the list of provisions for which the Regulator is allowed to issue a stop notice 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

- 7.93 Regulation 62 sets out a legal duty for co-operation and sharing of information from the Regulator 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

- 7.94 Regulation 63 is a consequential amendment to the Fire Safety Order to reflect that for higher-risk buildings the handover of information about completed building work 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

- 7.95 Regulation 64 is a consequential amendment to the Community Infrastructure Levy Regulations 2010.
- 7.96 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. The consequential amendment is necessary given the new procedures in this instrument for higher-risk building work.

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

- 7.97 Regulation 65 is a consequential amendment to the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023.

- 7.98 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.
- 7.99 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.
- 7.100 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

- 7.101 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.
- 7.102 Paragraph 1 (Schedule 1) describes the content of the competence declaration. It covers to persons 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 work on a new building or to carry out building work to an existing building. The client must sign the competence declaration.
- 7.103 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, which organisations are working on the project and the policy for reviewing the plan.
- 7.104 Paragraph 3 (Schedule 1) describes the change control plan. The change control plan sets out the procedures for implementing change control on the project and how they will be appropriate and will ensure compliance.
- 7.105 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.
- 7.106 Paragraph 5 (Schedule 1) describes the fire and emergency file. This 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. It also sets out the assumptions made about the intended occupiers and describes how the owner is intending to manage and maintain the building once it is complete to ensure its safe evacuation.
- 7.107 Paragraph 6 (Schedule 1) describes the partial completion strategy. If the intention is to use the partial completion route, this prescribed document must be submitted to and

approved by the Regulator. 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. It also describes how the dutyholders expect the owner of the building to manage and maintain the occupied part of the building.

Schedule 2: Exempt work

- 7.108 As outlined above, Schedule 2 prescribes the type of building work that is considered exempt from the procedures set out in this instrument. The prescribed building work is identical to building work exempt from procedures in the Building Regulations 2010.

Schedule 3: Transitional, supplementary and saving provisions

- 7.109 Schedule 3 sets out the transitional and saving provisions for higher-risk buildings when the new higher-risk regime comes into force. The provisions reflect the various scenarios depending upon whether public or private sector building control is being used (full plans route or initial notice route respectively), when full plans or an initial notice are accepted, rejected or cancelled. how much the building work has progressed by 6 April 2024, and whether the private building control provider (currently known as an approved inspector) becomes a registered building control approver by 6 April 2024.
- 7.110 Where full plans are not deposited with, or an initial notice is not accepted or deemed accepted by, a local authority before 1 October 2023, the proposed building work is subject to the higher-risk regime including the procedures set out in this instrument.
- 7.111 Where full plans are deposited with or an initial notice is submitted to and (deemed) accepted by a local authority before 1 October 2023, the building work covered by the full plans or initial notice benefits from the savings provisions. The higher-risk regime does not apply to this work. This may alter on 6 April 2024 depending upon whether the building work is sufficiently progressed (this term is defined in Paragraph 1), and, if private sector building control is being used, whether they become a registered building control approver by this date.
- 7.112 Where full plans are deposited with a local authority before 1 October 2023 but the local authority subsequently rejects those plans on or after that date, the building work described by the plans becomes subject to the higher-risk regime. Before the building work can start, the dutyholders must submit an application for building control approval to and it must be approved by the Regulator.
- 7.113 Where full plans are deposited with, or an initial notice is accepted or deemed accepted by a local authority by 1 October 2023 but building control approval subsequently lapses before 6 April 2024, the higher-risk building work becomes subject to the higher-risk regime. To continue building work, the dutyholders must submit an application for building control approval and it must be approved by the Regulator before building work can begin.
- 7.114 If an initial notice is cancelled between 1 October 2023 and 6 April 2024, the building work becomes subject to the higher-risk regime. To continue the building work, the dutyholders must submit an application for building control approval to and the application must be confirmed as valid by the Regulator. If the initial notice is cancelled before building work is sufficiently progressed, the building control approval application must meet all the applicable requirements of the higher-risk regime. If the initial notice is cancelled after building work is sufficiently progressed

the requirements that must be followed are modified to reflect this. Paragraph 5 sets out the modifications. Any work already carried out on site will be assessed by the Regulator as part of determining the application. The person who carried out the work, or the owner, must comply with any notice from the Regulator requiring them to cut into, lay open or pull down work to ascertain whether work contravenes building regulations.

- 7.115 The provisions also set out that where building work covered by an initial notice is not sufficiently progressed, plans certificates and final certificates do not provide protection from enforcement. Where building work covered by an initial notice is sufficiently progressed, final certificates provide protection from enforcement for the work covered under the final certificate, but plans certificates do not.
- 7.116 Paragraph 6 prescribes a requirement on local authorities to notify the Regulator where work has not sufficiently progressed no later than 6 March 2024 to provide support should building work need to transfer to the jurisdiction of the Regulator.
- 7.117 Where full plans are deposited with a local authority before 1 October 2023 and the building work is sufficiently progressed by 6 April 2024, the building work covered by the full plans benefits from the savings provisions. The higher-risk regime does not apply to this work.
- 7.118 Where full plans are deposited with a local authority before 1 October 2023 but the building work has not sufficiently progressed by 6 April 2024, the building work becomes subject to a modified version of the higher-risk regime. Building work can continue on site. Paragraph 9 sets out the modifications.
- 7.119 Where an initial notice is submitted and accepted or deemed accepted by a local authority before 1 October 2023, the building work sufficiently progresses before 6 April 2024 and the approved inspector who gave the initial notice becomes a registered building control approver before 6 April 2024, then the building work covered by the initial notice benefits from the savings provisions. The higher-risk regime does not apply to this work.
- 7.120 Where an initial notice is submitted and accepted or deemed accepted by a local authority before 1 October 2023 and either the building work is not sufficiently progressed or the approved inspector who gave the initial notice does not become a registered building control approved before 6 April 2024, then the initial notice ceases to be in force. The higher-risk regime applies to building work which was covered by the initial notice. To continue building work, the dutyholders must submit an application for building control approval to and it must be confirmed as valid by the Regulator. If the initial notice is cancelled because the building work is not sufficiently progressed, the building control approval application must meet all the applicable requirements of the higher-risk regime. Any work already carried out on site will be assessed by the Regulator as part of determining the application. The person who carried out the work, or the owner, must comply with any notice from the Regulator requiring them to cut into, lay open, or pull down work to ascertain whether work contravenes building regulations.
- 7.121 Where an initial notice is submitted and accepted or deemed accepted by a local authority before 1 October 2023, the building work is sufficiently progressed before 6 April 2024 and the approved inspector who gave the initial notice becomes a registered building control approver before 6 April 2024, but for another reason after 6 April 2024 the initial notice is cancelled, then the higher-risk regime applies to the

building work which was covered by the initial notice. To continue building work, the dutyholders must submit an application for building control approval to and it must be confirmed as valid by the Regulator. As the initial notice is cancelled after building work is sufficiently progressed the requirements of the higher-risk regime are modified to reflect this. Paragraphs 10 and 11 set out the modifications depending on the reason why the initial notice ceased. Any work already carried out on site will be assessed by the Regulator as part of determining the application. The person who carried out the work, or the owner, must comply with any notice from the Regulator requiring them to cut into, lay open or pull down work to ascertain whether work contravenes building regulations.

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 buildings⁴).
- 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. This instrument only applies to building work done in England and therefore consultation with the devolved administrations was not necessary.
- 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.
- 10.5 Overall, respondents agreed with our proposals.
- 10.6 The section on transitional provisions for higher-risk building received 49 responses. It covered various aspects of the policy outlining the approach intended to transition certain building work that had been notified to a building control body before the regime had come into force over to the Regulator. Some of the questions related to the definition of “commencement of work” and transitional provisions to individual

⁴ [Consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings](#)

buildings as opposed to multi-site projects. Across three questions, an average of approximately 58% agreed with the proposals. There was also another question considering any potential challenges with requiring local authorities and approved inspectors to notify the Regulator when building work has not commenced after the transitional period lapses.

- 10.7 The definition of “commenced” and how it related to the transitional buildings was part of our original proposal. This definition has been clarified and now refers to “sufficiently progressed” to reflect that “commencement of work” correlates to the three-year period associated with lapse of plans, whilst the transitional provisions relate to the six-month period between 1 October 2023 and 6 April 2024.
- 10.8 The transitional provisions have been updated to align with those for the introduction of Registered Building Control Approvers.
- 10.9 How the higher-risk regime requirements will apply to some buildings which transfer into the higher-risk regime has been modified in certain circumstances to reflect feedback, for example when the building work is sufficiently progressed before it transfers.
- 10.10 The section on the golden thread of information received 65 responses. There were 22 questions posed on this section covering the golden thread of information during the design and construction of higher-risk buildings. It covered proposals on the golden thread principles where it should be stored and transferred electronically, the new building control process and the golden thread of information and dutyholder duties in relation to the golden thread of information during the design and construction of new builds and building work in existing buildings. On average across the questions approximately 63% of respondents agreed with proposals. However, support ranged widely from 48% to 75% in agreement.
- 10.11 The section on robust hard stops (building control approval application and completion certificate application) received 80 responses and there were 34 questions posed on this section. The building control procedures will provide strengthened regulatory oversight and rigorous inspection of building regulations requirements before, during and on completion of building work, ensuring that building regulations compliance is considered by dutyholders at each stage of design and construction. The questions on this section covered: how building control approval applications should be submitted for higher-risk building work; what information must be submitted, including new documents, and by whom; the Regulator consulting with relevant enforcing authorities to make decisions on building control approval applications; the requirement for the client to give certain notices to the Regulator; the Regulator running a bespoke inspection and enforcement regime for higher-risk buildings; and, the submission of a completion certificate application upon the completion of building work to the Regulator for approval.
- 10.12 On average across the questions approximately 54% of respondents agreed with the proposals. However, out of the total 80 responses received on this section, a range from 14% to 26% of respondents did not answer all the questions.
- 10.13 The following changes have been made in response to the comments:
- 10.14 A validation process has been added before an application is determined. The validation process takes place within the statutory time-limit for determining the application and ensures any applications which do not include important information are quickly notified back to the client.

- 10.15 For the prescribed documents, the requirement to submit a statement setting out the planning status of the work as part of a building control approval application has been removed. The name of the proposed Design and Build Approach Document to the Building Regulations Compliance Statement to address concerns about the commercial connotations surrounding “Design and Build”.
- 10.16 As the definition of “commenced” is not when work starts, a notification has been added before work begins on site to ensure the Regulator is aware of when work is beginning. The notification to the Regulator of when work has finished on the site has been removed, as the submission of a completion certificate application or partial completion certificate application was seen as sufficient to serve this purpose.
- 10.17 The consultation proposed on a 12-week statutory time limit for determining completion certificate applications and partial completion certificate application. Following feedback this has been altered to eight-weeks.
- 10.18 The section on building work carried out in existing higher-risk buildings received 48 responses. The policy covered building control approval for this building work and third-party certification schemes and competent person schemes for building work in higher-risk buildings. Across nine questions posed in this section, an average of approximately 68% supported the proposals.
- 10.19 The consultation covered three categories of work (A, B and C). As the requirements for category A and B work were almost identical, these have amalgamated into category A work. The original category C is now category B in this instrument.
- 10.20 The consultation also covered the requirements on residents to notify their accountable person if they intended to carry out work. This duty has not been included within this instrument in line with the approach taken for residents’ duties across the higher-risk regime. Generally, residents will be required to notify their accountable person in line with their lease arrangements.
- 10.21 There were 62 responses to the proposals related to a stronger change control process for higher-risk buildings section. The questions covered various aspects including: recording keeping through the change control log; processes for different types of change including major and notifiable changes; the procedures when there is a change of client; and, the procedures when a new principal contractor or designer is appointed.
- 10.22 On average 60% of respondents agreed with the proposals across nine questions. There were four open questions on the types of changes that should be considered major and notifiable works, which on average received 59% of the 62 responses.
- 10.23 The types of changes which are major and notifiable have been amended following respondents’ comments.
- 10.24 For notifiable changes, the consultation proposed a 10-working day stand still period during which dutyholders cannot implement the notifiable change once the notification has been sent to the Regulator. This has been removed following concerns about the impact on the Regulator and the sector. Building work covered by a notifiable change may proceed at risk with the Regulator retaining the ability to enforce against the work, require further information or use their power to upgrade the change to a major change.
- 10.25 A change of client, principal designer or principal contractor has been separated out from the wider change control procedure, as these needed bespoke processes.

- 10.26 The section on mandatory occurrence reporting received 52 responses, covering various aspects of the policy including the definition of a safety occurrence, the information to be provided to the Regulator and the timescales for reporting. Across three questions posed, approximately 57% of respondents agreed with proposals.
- 10.27 There were 47 responses to the enforcement section of the consultation. This section covered policies in these Regulations and in the Building Regulations etc (Amendment) (England) Regulations 2023. The relevant parts of the section for this explanatory memorandum set out: the approach to appeals and internal review and applying to the Secretary of State under section 30A of the 1984 Act for a determination. The majority of respondents agreed to the questions in this section.
- 10.28 Respondents commented that extensive guidance would be needed from the government and Regulator to ensure compliance with the new building control regime.
- 10.29 A full government response to the consultation has been published at the same time as this instrument⁵.

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.
- 12.2 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 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, 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 including mitigating negative mental health and wellbeing impacts, better functioning mortgage and insurance markets, 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.

⁵ [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 ensuring 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.