

Draft Regulations laid before Parliament under section 120A(7) of the Building Act 1984, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No. [000]

BUILDING AND BUILDINGS

The Building (Public Bodies and Higher-Risk Building Work) (England) Regulations 2023

*Made - - - - [**]
Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 54A of the Building Act 1984(1).

The Secretary of State has consulted the regulator and other persons in accordance with section 120B(3) of the Building Act 1984.

A draft of these Regulations was laid before and approved by a resolution of both Houses of Parliament in accordance with section 120A(7) of the Building Act 1984.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Building (Public Bodies and Higher-Risk Building Work) (England) Regulations 2023.

(2) These Regulations come into force on the day on which section 32 of the Building Safety Act 2022 (building control authorities) comes into force in relation to England, ignoring any commencement of that section for the purpose only of making regulations.

(3) These Regulations extend to England and Wales.

Amendment to section 5 of the Building Act 1984

2. In section 5 of the Building Act 1984(2), after subsection (3) insert—

“(3A) In relation to higher-risk building work in England—

(1) 1984 c. 55. Section 54A is inserted by section 47 of the Building Safety Act 2022 (c. 30). Sections 120A and 120B are inserted by paragraph 77 of Schedule 5 to that Act.
(2) Section 5 is amended by paragraphs 7 and 8 of Schedule 5 to the Building Safety Act 2022. There are amendments to section 54 which are not relevant to this instrument.

- (a) exemptions under subsection (1) have no effect (and accordingly bodies must comply with requirements applicable to such work, whether substantive or not), and
- (b) subsection (3) has no effect (and accordingly the provisions mentioned in that subsection are not disapplied or otherwise affected by it in relation to such work).”.

Amendment to section 54 of the Building Act 1984

3. In section 54 of the Building Act 1984, after subsection (1) insert—

“(1A) A public body’s notice is of no effect to the extent that it relates to higher-risk building work in England (and accordingly Schedule 4 does not have effect in relation to such work).”.

Amendment to Schedule 4 to the Building Act 1984

4.—(1) Schedule 4 to the Building Act 1984 is amended as follows.

(2) In paragraph 1(1) for “the occurrence of, or the expiry of a prescribed period of time beginning on the date of such event as may be prescribed” substitute—

“—

- (a) the occurrence of, or the expiry of a prescribed period of time beginning on the date of such event as may be prescribed, or
 - (b) it is cancelled, in whole or part, by a notice under paragraph 1A (work in England reassessed as higher-risk building work)”.
- (3) After paragraph 1 insert—

“Cancellation of a public body’s notice where work to a building in England becomes higher-risk building work

1A.—(1) Sub-paragraph (2) applies where—

- (a) a public body’s notice relating to a building in England is in force, and
- (b) it appears to the public body that some or all of the work in relation to which that notice has effect has become higher-risk building work.

(2) Where this sub-paragraph applies the public body must, as soon as is reasonably practicable—

- (a) cancel the relevant part of the public body’s notice by notice in the prescribed form given to the local authority concerned, and
- (b) give a copy of that notice to the regulator.

(3) Sub-paragraph (4) applies where—

- (a) a public body’s notice relating to a building in England is in force, and
- (b) it appears to the local authority concerned that some or all of the work in relation to which that notice has effect has become higher-risk building work.

(4) Where this sub-paragraph applies the local authority must, as soon as is reasonably practicable—

- (a) cancel the relevant part of the public body’s notice by notice in the prescribed form given to the public body, and
- (b) give a copy of that notice to the regulator.

- (5) Where a notice is given under sub-paragraph (2) or (4) (a “cancellation notice”)—
- (a) the part of the public body’s notice to which the cancellation notice relates is cancelled with effect from the day after the day on which the cancellation notice is given, and
 - (b) a new public body’s notice may not be given in relation to any of the work to which the cancelled part of the public body’s notice related.
- (6) Where a public body fails to—
- (a) give to a local authority a notice that the body is required to give by sub-paragraph (2);
 - (b) give to the regulator a copy of a notice that the body is required to give by sub-paragraph (2),

then on becoming aware of the failure the regulator may, by notice in writing, impose a penalty of £7,500, which is recoverable by the regulator as a debt.

- (7) Before imposing a penalty under sub-paragraph (6) the regulator must—
- (a) give the public body a notice of its intention to impose the penalty; and
 - (b) have regard to any representations made by the public body during the period referred to in sub-paragraph (8).

(8) The regulator must not give a notice under sub-paragraph (6) imposing a penalty on a public body until a period of 14 days beginning with the day after the day on which the notice under sub-paragraph (7) is given has expired.

(9) A public body may appeal to the tribunal against the decision of the regulator to impose a penalty under sub-paragraph (6) provided that the appeal is made within a period of 21 days beginning with the day after the day on which the regulator gives a notice to the body imposing the penalty.

- (10) On an appeal the tribunal—
- (a) must determine whether the decision to impose the penalty was based on an error of fact, wrong in law or unreasonable, and
 - (b) may confirm, quash or vary the decision.

(11) In this paragraph “the relevant part of the public body’s notice” means so much of the public body’s notice (whether all or part of it) as relates to work that has become higher-risk building work.

Effect of public body’s notice ceasing to be in force where work becomes higher-risk building work

1B.—(1) This paragraph applies where a public body’s notice ceases to be in force, whether in whole or in part, by virtue of paragraph 1A.

(2) If, before the day on which the relevant part of the public body’s notice ceased to be in force, a public body’s final certificate under paragraph 3 of this Schedule—

- (a) was given in respect of part of the work to which the relevant part of the public body’s notice relates, and
- (b) was accepted by the local authority,

the fact that the relevant part of the public body’s notice has ceased to be in force does not affect the continuing operation of paragraph 3(3) of this Schedule in relation to that part of the work.

- (3) The building control authority in relation to any of the uncertified work is the regulator.
- (4) In sub-paragraph (3), the “uncertified work” means any of the work—

- (a) to which the relevant part of the public body’s notice relates, and
- (b) in respect of which no public body’s final certificate has been accepted by the local authority as mentioned in sub-paragraph (2).

(5) Sections 91(3) (duties of the regulator) and 121A(1) (meaning of “building control authority”) apply as if, in each case, the reference to section 91ZA or 91ZB were a reference to section 91ZA, 91ZB or this paragraph.

(6) In any case where this paragraph applies, the reference in subsection (4) of section 36 to the date of the completion of the work in question has effect, in relation to a notice under subsection (1) of that section, as if it were a reference to the date on which the relevant part of the public body’s notice ceased to be in force.

(7) In this paragraph “the relevant part of the public body’s notice” means so much of the public body’s notice (whether all or part of it) as was cancelled by a notice under paragraph 1A of this Schedule.

Appeals against cancellation of a public body’s notice by a local authority

1C.—(1) Where a local authority cancels a public body’s notice, in whole or in part, by giving a notice (a “cancellation notice”) under paragraph 1A(4) of this Schedule the public body may appeal to the tribunal within 21 days of the day the notice is given under that paragraph.

(2) On an appeal under sub-paragraph (1), the tribunal must determine whether the relevant part of the public body’s notice was properly cancelled.

(3) In a case where the tribunal determines that the relevant part of the public body’s notice was not properly cancelled—

- (a) the determination does not have the effect of reinstating the relevant part of the public body’s notice;
- (b) paragraph 1B(2) and (6) of this Schedule continue to apply in relation to the relevant part of the public body’s notice;
- (c) the tribunal may give such directions as it considers appropriate in consequence of the determination (which may include giving directions to the regulator).

(4) In this paragraph the “relevant part of the public body’s notice” means so much of the public body’s notice (whether all or part of it) as was subject to the cancellation notice.”.

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

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

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Building Act 1984 in connection with higher-risk building work carried out by local authorities and any other public bodies. A number of new definitions, such as higher-risk building, higher-risk building work, the tribunal and the regulator are inserted into the Building Act 1984 by Building Safety Act 2022 (c. 30). See section 126 of the Building Act 1984 for these definitions.

Regulation 2 amends section 5 of the Building Act 1984 to provide that, as respects England, an exemption granted under that section has no effect in relation to higher-risk building work. The effect of this provision is to ensure that such building work will be supervised by the building safety regulator.

Regulation 3 amends section 54 of the Building Act 1984 to provide that, as respects England, that public bodies notices may not include any higher-risk building work. The effect of this provision is to ensure that such building work will be supervised by the building safety regulator.

Regulation 4 amends Schedule 4 to the Building Act 1984 to provide that the whole or part of a public body's notice may be cancelled where work to a building in England which is specified in such a notice becomes higher-risk building work. Provision inserted into Schedule 4 also explains the effect of the cancellation and the grounds for appealing against a decision of a local authority to cancel such a public body's notice.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.