

EXPLANATORY MEMORANDUM TO
THE BUILDING (RESTRICTED ACTIVITIES AND FUNCTIONS) (ENGLAND)
REGULATIONS 2023

2023 No. 1052

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 (Restricted Activities and Functions) (England) Regulations 2023 (the Regulations) is to prescribe in building regulations those functions which are only exercisable through, or with advice of, registered building inspectors, as well as those activities which may only be carried out through a registered building inspector. The Regulations are made through powers in sections 46A and 54B of the Building Act 1984 (the 1984 Act) which were inserted by section 44 of the Building Safety Act 2022 (the 2022 Act).

2.2 Following the Grenfell Tower tragedy, the government appointed Dame Judith Hackitt to lead an independent review of building regulations and fire safety. In her report, 'Building a Safer Future', Dame Judith outlined a new approach to managing fire and structural safety risks in high-rise multi-occupied residential buildings, and recommended reform of the building control profession, to improve standards and ensure a levelling playing field in conduct and competence for all building control professionals.

2.3 To implement the new regulatory regime to improve standards, competence and accountability for the building control profession, these Regulations set out which activities and functions will be restricted for local authorities, the Building Safety Regulator (the Regulator) and registered building control approvers (RBCAs). The provisions in these Regulations will ensure that building control work and building control decisions are carried out and made by a competent person, or by a body acting on the advice of a competent person.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 42 of the 2022 Act inserts a new Part 2A into the 1984 Act. This new Part provides that the Regulator must set up and maintain a register of building inspectors and provide a framework to govern who is on the register. The purpose is to ensure that building inspectors have met, and continue to meet, high standards of competence and conduct.
- 6.2 Building on this, section 44 of the 2022 Act inserts sections 46A and 54B into the 1984 Act, these new provisions oblige building control bodies to only use building inspectors that are duly registered to provide advice and to deliver certain building control services. This instrument is made under powers in those provisions to prescribe specific functions which are only exercisable through, or with advice of, registered building inspectors and to prescribe the specific activities which may only be carried out through a registered building inspector.
- 6.3 Section 46A(1) of the 1984 Act gives a power to set out in regulations the restricted activities that local authority building control may carry out only through a registered building inspector, acting on the authority's behalf, whose registration has effect in relation to work of that description.
- 6.4 Section 46A(2) of the 1984 Act gives a power to set out in regulations the restricted functions that local authority building control and the Regulator may carry out only through a registered building inspector, acting on the authority's behalf, whose registration has effect in relation to work of that description.
- 6.5 Section 54B(2) of the 1984 Act gives a power to set out in regulations the restricted activities that a RBCA may carry out only through a registered building inspector, acting on the authority's behalf, whose registration has effect in relation to work of that description.
- 6.6 Section 54B(3) of the 1984 Act gives a power to set out in regulations the restricted functions that a RBCA may carry out only through a registered building inspector, acting on the authority's behalf, whose registration has effect in relation to work of that description.
- 6.7 This instrument is one of a series of statutory instruments laid by the Department for Levelling Up, Housing and Communities as part of the implementation of changes to the current building control system and deliver improvements across the entire built environment. The other instruments include the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023, the Building Regulations etc. (Amendment) (England) Regulations 2023 and the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023.

7. Policy background

What is being done and why?

- 7.1 The wider policy intent is to implement a step-change within the building control profession and to strengthen the building sector by raising competence levels and accountability to ensure all buildings comply with the building regulations. This

statutory instrument supports this aim and introduces the required amendments to implement the changes through regulations.

- 7.2 The amendments to the 1984 Act set out a registration process for individuals, who will for the first time be required to register as building inspectors with the Regulator. Registered building inspectors will need to meet the registration requirements set by the Regulator, including following the Code of Conduct and Building Inspectors Competence Framework which the Regulator will publish.
- 7.3 This instrument sets out the restricted activities that local authorities and RBCAs must carry out through a registered building inspector. For local authorities, this includes checking compliance with any applicable requirements as set out in the building regulations regarding plans that are submitted under any provision of the Building (Approved Inspectors etc.) Regulations 2010, and the inspection of building work against the building regulations. For RBCAs the restricted activities are the checking of plans against the building regulations in relation to an initial notice, amendment notice or plans certificate that is given under the Building (Approved Inspectors etc.) Regulations 2010, together with the inspection of building work that is to be carried out for the purpose of checking compliance against the building regulations. The levels of restricted activities will correspond to the types of building inspector registration, so a registered building inspector can only carry out activities that fall within their registration class.
- 7.4 This instrument also sets out restricted functions, for which the building control body must obtain advice from a registered building inspector before carrying out the corresponding action, where such advice has not already been obtained and considered. These relate to decision-making points during a building project, where it would be in the interest of safety, transparency and accountability to obtain the advice of a registered building inspector.
- 7.5 The functions that will be restricted will be similar, but not the same, between local authorities, RBCAs and the Regulator. These will apply across all types of buildings, including higher-risk buildings.
- 7.6 The restricted functions prescribed for local authorities mostly relate to the sending of notices, such as enforcement for the removal or alteration of work that contravenes building regulations, and building control decisions that are specific to building control authorities. Amongst other functions, this includes the approval or rejection of applications for building control approval, sending enforcement notices for work that contravenes building regulations, making decisions on pulling down, removing or altering work, giving stop notices and giving completion certificates. This will ensure that local authorities will consider the advice of a registered building inspector when making such decisions and ensure that this is taken into account when deciding on the appropriate action to take or whether or not a certificate should be given. The restricted functions prescribed for RBCAs relate to those decision-making points which trigger the issuing of notices or certificates to do with the work. This includes the sending of initial notices, plans certificates, final certificates and amendment notices to a local authority. It also includes the cancellation of an initial notice and the submission of a transfer certificate and report to a local authority.
- 7.7 Prescribing these as restricted functions will ensure that the RBCA will have carefully considered their capability regarding the building project that they will oversee before submitting an initial notice, as well as having assurances that plans meet the building

regulations before submitting a plans certificate. Further, it will ensure that the RBCA has also considered advice on the contravention of building regulations before sending a cancellation notice, as well as whether work meets the building regulations before a final certificate is sent.

- 7.8 The restricted functions prescribed for the Regulator are similar to the restricted functions for local authorities, with some additional functions specific to the new gateway requirements for higher-risk buildings. Some of the functions that will be restricted for the Regulator includes the approval or rejection of building control approval applications, determining completion or partial-completion certificates and determining a change control application. As with the other restricted functions, this will ensure that the Regulator takes the advice, assessment and assurances from the registered building inspector when making decisions.

8. 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 Not applicable as these are new regulations.

10. Consultation outcome

- 10.1 The Department conducted a public consultation on proposed changes to the building control profession and the building control process for approved inspectors (in future to be known as registered building control approvers) from 31 January 2023 to 14 March 2023. This consultation sought views on the proposals that have been included in this instrument such as the restricted activities for building control inspectors and the restricted functions to be set out for local authorities, the regulator and RBCAs. We received a favourable response on all proposals.
- 10.2 A full consultation response has been published and is available at <https://www.gov.uk/government/consultations/changes-to-the-building-control-profession-and-the-building-control-process-for-approved-inspectors>.
- 10.3 We have used this data to inform our policy making for this statutory instrument.
- 10.4 The Department has conducted further consultation through extensive stakeholder engagement with those who would be affected by the proposed changes, including the Regulator, local authorities, approved inspectors, trade bodies and representatives in the construction sector.

11. Guidance

- 11.1 No specific guidance will be issued in relation to these Regulations, however the Regulator will outline the regulated building control activities in their guidance for registered building inspectors.

12. Impact

- 12.1 No significant impact is foreseen on the business, charities, voluntary bodies or the public sector, although these Regulations will have an impact on local authorities, RBCAs and the Regulator as they will be required to use an appropriately registered building inspector to carry out the activities set out in these instructions, and obtain and

consider the advice of a registered building inspector before carrying out the functions set out in these instructions.

- 12.2 These impacts are not expected to disproportionately affect those with protected characteristics, the environment, or businesses.
- 12.3 A full impact assessment has been prepared for this instrument, and S.I. 2023/906, setting out the impact on business and the public sector and is published alongside S.I. 2023/906. The full impact assessment can be found here: https://www.legislation.gov.uk/ukia/2023/93/pdfs/ukia_20230093_en.pdf.

13. Regulating small business

- 13.1 Small business will be equally subject to the requirements placed on all building control bodies, because of the need to ensure equal standards of competence and conduct.
- 13.2 This policy will have an impact on RBCAs due to the requirement to obtain and consider the advice of a registered building inspector before carrying out the functions set out in these instructions. By virtue of section 54B(1) of the 1984 Act these requirements, and therefore the impacts, do not apply where the RBCA is itself a registered building inspector.

14. Monitoring & review

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

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

15. Contact

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