
STATUTORY INSTRUMENTS

2023 No. 753

**The Building Safety (Responsible Actors
Scheme and Prohibitions) Regulations 2023**

PART 3

Planning and Building Control Prohibitions

CHAPTER 3

Building Control Prohibitions

Building control prohibitions

33.—(1) An applicable person is subject to each of the building control prohibitions in section 129(4) of the Act.

(2) This regulation is subject to regulations 34, 35, 36, 37 and 38.

(3) An applicable person may not give any document listed in paragraph (4) and accordingly those documents are prescribed for the purposes of section 129(4)(g) of the Act.

(4) The documents referred to in paragraph (3) are—

- (a) an initial notice within the meaning of section 47 of the Building Act 1984 (giving and acceptance of initial notice);
- (b) a building notice within the meaning of regulation 2 of the Building Regulations 2010 (interpretation);
- (c) a request for plans certificate under section 50(1) (plans certificate) of the Building Act 1984;
- (d) an amendment notice within the meaning of section 51A of the Building Act 1984 (variation of work to which initial notice relates);
- (e) an application for a certificate under regulation 17 (completion certificates) or 17A (certificate for building occupied before work is completed) of the Building Regulations 2010;
- (f) an application for a certificate under regulation 18 of the Building Regulations 2010 (unauthorised building work).

(5) No person may give any document listed in paragraph (6) to an applicable person or to any other person in respect of works carried out or to be carried out by an applicable person and accordingly those documents are prescribed for the purposes of section 129(4)(h) of the Act.

(6) The documents referred to in paragraph (5) are—

- (a) a notice of passing or rejection of plans within the meaning of section 16(6) of the Building Act 1984;
- (b) a certificate under regulation 17 of the Building Regulations 2010 (completion certificates);

- (c) a certificate under regulation 17A of the Building Regulations 2010 (certificate for building occupied before work is completed);
- (d) a plans certificate within the meaning of section 50 (plans certificate) of the Building Act 1984;
- (e) a final certificate within the meaning of section 51 (final certificate) of the Building Act 1984;
- (f) a regularisation certificate within the meaning of regulation 18(5) of the Building Regulations 2010 (unauthorised building work).

(7) No person may accept any document listed in paragraph (8) where it is given by an applicable person and accordingly those documents are prescribed for the purposes of section 129(4)(i) of the Act.

(8) The documents referred to in paragraph (7) are—

- (a) plans deposited under section 16 of the Building Act 1984;
- (b) an initial notice within the meaning of section 47 of the Building Act 1984 (giving and acceptance of initial notice);
- (c) an amendment notice within the meaning of section 51A of the Building Act 1984 (variation of work to which initial notice relates);
- (d) a plans certificate within the meaning of section 50 (plans certificate) of the Building Act 1984;
- (e) a final certificate within the meaning of section 51 (final certificate) of the Building Act 1984;
- (f) an application for a certificate under regulation 17 (completion certificates) or 17A (certificate for building occupied before work is completed) of the Building Regulations 2010;
- (g) an application for a certificate under regulation 18 of the Building Regulations 2010 (unauthorised building work).

(9) An applicable person may not take any action prohibited by this regulation through any agent or contractor or any other person acting for or on their behalf.

Exception to building control prohibition: emergency repair work

34.—(1) Where an applicable person proposes to carry out building work which consists of emergency repair work then, subject to paragraph (2), the provision by them of a building notice pursuant to regulation 12(8) of the Building Regulations 2010 is not to be treated as a breach of a building control prohibition.

(2) Paragraph (1) applies only where—

- (a) each of the criteria in regulation 12(8)(a) to (c) of the Building Regulations 2010 are satisfied;
- (b) the applicable person gives the local authority the relevant building notice as soon as reasonably practicable after the commencement of the work and explains on giving that notice—
 - (i) that they are an applicable person but that this provision applies to them; and
 - (ii) the nature of the emergency repairs required to be undertaken.

Exception to building control prohibition: work to occupied buildings

35.—(1) An applicable person is not prohibited from—

- (a) depositing plans under section 16 of the Building Act 1984;
- (b) giving an initial notice within the meaning of section 47 of the Building Act 1984 (giving and acceptance of initial notice); or
- (c) giving a building notice within the meaning of regulation 2 of the Building Regulations 2010 (interpretation),

in relation to relevant building work to be carried out to an existing occupied building where on the application date the work had not started.

(2) Where plans are deposited pursuant to paragraph (1) the local authority is not prohibited from giving the applicable person a notice of passing or rejection in relation to those plans under section 16(6) of the Building Act 1984.

(3) Where an initial notice is given pursuant to paragraph (1) the local authority is not prohibited from giving the applicable person a notice accepting or rejecting that initial notice under section 47 of the Building Act 1984.

(4) Where relevant building work is carried out to an existing occupied building following the depositing or giving of a document under paragraph (1)—

- (a) then the applicable person is not prohibited from giving—
 - (i) an application for a certificate under regulation 17 of the Building Regulations 2010 (completion certificates) in relation to the work;
 - (ii) an application for a certificate under regulation 17A of the Building Regulations 2010 (certificate for building occupied before work is completed) in relation to the work;
 - (iii) a request for a plans certificate under section 50(1) (plans certificate) of the Building Act 1984 in relation to the work;
- (b) then, in respect of the work, a person may give to the applicable person—
 - (i) a plans certificate within the meaning of section 50 (plans certificate) of the Building Act 1984 in relation to the work;
 - (ii) a final certificate within the meaning of section 51 (final certificate) of the Building Act 1984 in relation to the work.

(5) Where paragraph (4) applies the local authority is not prohibited from giving the person a certificate under regulation 18 of the Building Regulations 2010 in relation to the work.

(6) Where paragraph (4) applies the local authority is not prohibited from giving the person a notice accepting or rejecting that final certificate under section 51 of the Building Act 1984.

(7) In this regulation—

- “application date” means the date on which the document referred to in paragraph (1) is deposited or given by the applicable person;
- “dwelling” has the meaning in regulation 2 of the Building Regulations 2010;
- “material change of use” has the meaning in regulation 5 of the Building Regulations 2010;
- “occupied”, in relation to a building, means at least one dwelling contained in the building is occupied by an arm’s length third party on the application date;
- “relevant building work” means any building work except work done to give effect to a material change of use of the building or part of the building.

Exception to building control prohibition: purchasers

36.—(1) The Secretary of State may on the application of an applicable person grant an exception to the building control prohibitions—

(a) to permit the issuing by a local authority of a certificate under regulation 17 (completion certificate) of the Building Regulations 2010;

(b) to permit the acceptance by a local authority of a final certificate within the meaning of section 51 (final certificate) of the Building Act 1984 in relation to a particular building;

in respect of a specific building where the Secretary of State is satisfied that the criteria in paragraph (2) are met.

(2) The criteria in this paragraph are met where—

(a) before the applicable person became an applicable person—

- (i) building work in respect of the building had been commenced by the applicable person;
- (ii) there is a person who exchanged a contract for the sale and purchase of a dwelling contained in the building, or for the building where it comprises a single dwelling (“the purchaser”);
- (iii) the purchaser has paid or is liable to pay to the seller of the dwelling or building a deposit in accordance with the terms of that contract;

(b) the purchaser is not in the same group as the applicable person and the purchase of the dwelling or building is an arm’s length transaction at market value and on arm’s length terms;

(c) the purchase of the dwelling or building is for domestic and not for business or commercial purposes; and

(d) the Secretary of State is satisfied that the interests of the purchaser will be materially prejudiced if the exception is not granted and that the grant of the exception is not contrary to or likely to frustrate the purposes of the scheme set out at regulation 5.

(3) An application under this regulation must—

(a) be made in writing;

(b) be supported by evidence as to each of the criteria in paragraph (2).

(4) The Secretary of State may, by notice in writing, require the applicant to provide by a time specified in the notice any further information which the Secretary of State requires to make a determination under this regulation.

(5) If a person required to provide information under paragraph (4) does not provide the specified information within the period specified in the notice, their application under this regulation is to be treated as having been refused.

(6) An application under this regulation must be made before any document referred to in paragraph (1) is sought, given, issued or accepted, and any such document sought or purported to be given, issued or accepted (as the case may be) before the Secretary of State has granted an exception under this regulation is not to be treated as validly given, issued or accepted.

Exception to building control prohibitions and modification of the Building Regulations 2010: regularisation

37.—(1) A relevant purchaser is not prohibited from giving an application for a certificate under regulation 18 (unauthorised building work) of the Building Regulations 2010 and a local authority is not prohibited from granting such a certificate.

(2) In this regulation “relevant purchaser” means—

(a) any purchaser or owner of an individual dwelling built by an applicable person, or

(b) any purchaser or owner of any building or any part of a building built by an applicable person,

provided that the relevant purchaser is not in the same group as the applicable person and the purchase is an arm's length transaction where the purchaser acquired the dwelling or building or part of a building in the ordinary course of business (where applicable), at market value and on arm's length terms.

(3) For the purposes of paragraph (1), regulation 18 of the Building Regulations 2010 is to have effect in relation to an application for a certificate under that regulation by a relevant purchaser as if any work carried out by an applicable person which was not unauthorised building work (within the meaning set out in that regulation) were treated as if it were unauthorised building work.

Exception for critical national infrastructure

38.—(1) The Secretary of State may disapply any or all of the building control prohibitions in relation to an applicable person in respect of a specific building or site, if in the view of the Secretary of State—

- (a) the building work or proposed building work relates to critical national infrastructure; and
- (b) it is in the public interest to disapply the prohibition.

(2) In this regulation—

“critical national infrastructure” means those elements of infrastructure, the loss or compromise of or inadequate provision of which may result in—

- (a) major detrimental impact on the availability, integrity or delivery of essential services, including services whose integrity, if compromised, could result in significant loss of life or casualties, taking into account significant economic or social impacts;
- (b) a significant impact on national security, national defence, or the functioning of the state, and includes building works which are necessary to facilitate the safe or effective construction or operation of the critical national infrastructure concerned;

“elements of infrastructure” means the assets, facilities, systems or networks that operate and facilitate the infrastructure.

Effect of things done in contravention of these Regulations

39.—(1) Where, notwithstanding the prohibitions imposed by regulation 33, a document referred to in regulation 33(3) or (5) is given, then—

- (a) that document is not to be treated as validly given, and
- (b) any decision or action taken in relation to such a document is not to be treated as validly taken, in particular—
 - (i) no plans purported to be passed are to be treated as validly passed;
 - (ii) no notice purported to be accepted is to be treated as validly accepted;
 - (iii) no certificate purported to be granted is to be treated as validly granted;
 - (iv) no application purported to be granted is to be treated as validly granted.

(2) Where, notwithstanding the prohibitions imposed by regulation 33, a document referred to in regulation 33(7) is accepted, then—

- (a) that document is not to be treated as validly accepted, and
- (b) any decision or action taken in relation to such a document is not to be treated as validly taken, in particular—
 - (i) no plans purported to be passed is to be treated as validly passed;
 - (ii) no notice purported to be accepted is to be treated as validly accepted;

- (iii) no certificate purported to be accepted or granted is to be treated as validly accepted or granted;
- (iv) no application purported to be granted is to be treated as validly granted.

Transitional provision

40.—(1) The prohibitions imposed by regulation 33 do not affect the validity of any document given by or to the applicable person, where that document is given by or to them on a date before that person was an applicable person.

(2) The prohibitions imposed by regulation 33 do not affect the validity of the acceptance of any document which is given by the applicable person, where that acceptance is given on a date before that person was an applicable person.