

EXPLANATORY MEMORANDUM TO
THE BUILDING REGULATIONS ETC. (AMENDMENT) (ENGLAND)
REGULATIONS 2023

2023 No. 911

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 These Regulations amend the Building Regulations 2010 (the 2010 Regulations) to support the new higher-risk building control regime, and provide for the Building Safety Regulator to be the only building control authority for all higher-risk buildings. They also make consequential amendments to other regulations.

2.2 This instrument is one of a package of statutory instruments laid by the Department for Levelling Up, Housing and Communities, to implement changes to the current building control system and deliver improvements across the entire built environment, as legislated for through the Building Safety Act 2022 (the 2022 Act), and the amendments made through that Act to the Building Act 1984.

2.3 The changes to the building control regime include a new building control process for higher-risk building work, and changes to non-higher risk building work to raise standards across the built environment. These include clear legal responsibilities for those involved in the commissioning, design and construction of building work, and those who carry out building control.

2.4 These Regulations also address arrangements for a single building control body for project comprising both higher-risk buildings and non-higher-risk buildings. They introduce a new definition (in relation to local authority building control activity) of ‘commencement’ of work for existing and new buildings, and automatic lapse of building control approval for projects that do not meet this definition, strengthen the arrangements for the handover of fire safety information, and set out transitional arrangements for the procedural requirements for non-higher risk building work.

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 1 of the 1984 Act enables building regulations to be made for England and Wales for a number of purposes with respect to the design and construction of buildings, building work and the services, fittings and equipment provided in or in connection with buildings. These purposes include securing the health, safety, welfare and convenience of persons in and about buildings.
- 6.2 The 2022 Act establishes a new more stringent building safety regime for higher-risk buildings. Part 3 of the 2022 Act makes a number of amendments to the 1984 Act, including providing for the Building Safety Regulator ('the Regulator') to be the only building control authority for higher-risk buildings in England. Part 3 of the 2022 Act also: amends the 1984 Act so that there are applications for building control approval instead of deposits of plans; provides for building is not commenced; and allows for regulations to define what amounts to commencement of work.
- 6.3 This instrument, in particular, makes amendments to the 2010 Regulations to support these changes. In addition to amending the 2010 Regulations, this instrument also makes amendments to the Building (Local Authority Charges) Regulations 2010, the Energy Performance of Buildings (England and Wales) Regulations 2012, the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023, and the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023.

7. Policy background

What is being done and why?

- 7.1 The 2022 Act establishes a new more stringent building safety regime for higher-risk buildings as part of the new approach to managing fire and structural safety risks in these buildings, and delivers on key aspects of Dame Judith Hackitt's recommendations, as set out in her Building a Safer Future Report (the report), following her Independent Review of Building Regulations and Fire Safety, commissioned by government after the Grenfell Tower fire.
- 7.2 This instrument is part of these reforms and, alongside the commencement of the relevant provisions of the 1984 Act, and the series of statutory instruments mentioned above, introduce the new building control regime for higher-risk buildings, and make a number of other significant changes for other types of buildings.
- 7.3 Regulation 3 of this instrument inserts and amends definitions in the 2010 Regulations.
- 7.4 Regulation 4 prescribes that the 2010 Regulations apply to higher-risk buildings except for the regulations expressly listed under this regulation. The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 separately set out the procedures which apply to higher-risk buildings.
- 7.5 Regulation 5 of this instrument provides that the exemption from the procedural requirements of the 2010 Regulations for the Mayor's Office for Policing and Crime does not apply in relation to higher-risk buildings.

- 7.6 Regulation 6 introduces new dutyholder and competence requirements under the building regulations: new regulations 11A to 11Q. These requirements will apply to all building work, including that undertaken on higher-risk buildings. The regulations will provide accountability and clarity of roles and responsibilities of those involved in the procurement, design and undertaking of building work, and the duties which will apply to them: 11A, 11B, 11C and 11P set out the requirements for clients, including domestic clients; 11J, 11K, 11L, 11M and 11N set out the duties of those undertaking design work and/or building work, including designers, principal designers, contractors and principal contractors; and 11D to 11I and 11O set out the competence requirements for those appointed to undertake design work and/or building work, when those appointments should be made, and the procedures to be followed when these dutyholders change or cease to be competent.
- 7.7 Regulation 6, 11Q(2) of this instrument inserts a requirement for the client, within 5 days of completion of the work, to provide compliance declarations from itself and the principal dutyholders in relation to the work. A similar requirement applies in relation to proposals to occupy the building before the work is completed.
- 7.8 Regulation 7 of this instrument replaces references to the deposit of plans with references to applications for building control approval in the 2010 Regulations. This amendment is necessary as the 2022 Act repeals section 16 of the 1984 Act (deposit of plans). Regulation 8 prescribes the new procedures for applications for building control approval with full plans, modelled on the procedures in section 16 of the 1984 Act. Regulation 8 provides for appeals against decisions relating to these applications: these are necessary following the repeal of the current procedures for referring plans to the Secretary of State. Regulations 7 and 8 also make other amendments to the 2010 Regulations which support the changes to the 1984 Act made by the 2022 Act. These changes, together with others, such as on consultations and the requirement from April 2024 that local authorities must get advice from a registered building control inspector before determining such an application, should allow for a better assessment of how the proposed building work complies with all applicable building regulations' requirements.
- 7.9 Regulation 9 prescribes that a consultation between the building control authority and the relevant enforcing authorities for the Regulatory Reform (Fire Safety) Order 2005 (Fire Safety Order) must take place before an application for building control approval is determined. The 2022 Act provides for article 45 (consultation with fire and rescue authorities) of the Regulatory Reform (Fire Safety) Order 2005 to be revoked to enable this requirement to be moved into the Building Regulations.
- 7.10 Regulation 10 of this instrument makes provision for a number of new appeals routes, including for decisions that have included an error of fact, such as being wrong in law, being unreasonable, or not following the correct procedures or regulations. It also amends appeals being made where a local authority refuses to consider an application for building control approval, an initial notice or an amendment notice because it would apply to a higher-risk building. Provision is also made in relation to the grounds of appeal and procedures in relation to appeals to the First-tier Tribunal.
- 7.11 Regulation 11 makes provision in relation to regulator's notices. A regulator's notice is a joint notice issued by the Regulator and the client to the relevant local authority, to allow the Regulator to act as the building control authority for both higher-risk and non-higher-risk building work for the same project. Regulation 11 sets out the process for the submission of a regulator's notice, the content of such a notice, the grounds on which

a local authority may reject a notice and the grounds for an applicant to appeal the local authority's decision. Without a regulator's notice, the Regulator is not able to be the building control body for non-higher-risk building work. These provisions will allow the developer, with the agreement of the Regulator, to simplify the building control process for sites containing both higher-risk and non-higher-risk building work, by having only one building control body. Where the Regulator is the building control authority for building work by virtue of a regulator's notice then the 2010 Regulations apply in relation to that building work, i.e. the procedures in the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 do not apply to that work.

- 7.12 Regulation 12 of this instrument requires that a client makes an installer aware if the work undertaken by the installer is work in relation to a higher-risk building.
- 7.13 Regulation 13 of this instrument strengthens fire safety information handover from the person carrying out the work to the responsible person. This will include handing over the information earlier in the process; gaining confirmation from the person who receives the information that it is sufficient to enable them to understand, operate and maintain the building; and giving notice to the relevant authority that the transfer of information has taken place. The fire safety information is information relating to the design and construction of the building or extension, and the services, fittings and equipment provided in or in connection with the building or extension which will assist the responsible person to operate and maintain the building or extension with reasonable safety.
- 7.14 Regulation 14 omits regulations 45 and 46 of the 2010 Regulations. In separate commencement regulations, the Department intends to commence section 33 (testing) of the 1984 Act. Once section 33 is commenced regulations 45 and 46 of the 2010 Regulations are no longer needed, and regulation 14 of this instrument omits those provisions.
- 7.15 The 2022 Act amended the 1984 Act to provide for building control approval to automatically lapse three years after it is granted if work to each individual building is not commenced. This change will mean that, where work relates to more than one building, and this work has not commenced within the three-year time limit, the building control approval for each of those specific buildings where work has not commenced will automatically lapse, even if work on the remainder of the site has commenced. The 1984 Act includes a power to define in regulations when work is to be treated as commenced for these purposes. Regulation 15 of this instrument utilises this power to prescribe the definition of the commencement of work. A definition of the commencement of work has only previously been set in guidance, by prescribing the definition in regulation the requirement should be clearer, whilst also avoiding the situation where a site that has only commenced a minor amount of building work can retain building control approval after three years has passed.
- 7.16 Regulation 15 sets out the definition for different types of building work. For complex buildings, work is to be regarded as commenced when the foundations supporting the building and the structure of the lowest floor level of that building (but not the other buildings or structures to be supported by those foundations) are completed. Where the work consists of a building that is not complex, or a horizontal extension of a building, work is to be regarded as commenced when the sub-surface structure of the building or the extension including all foundations, basement level (if any) and the structure of ground floor level is completed. Where the work consists of any other building work, work is to be regarded as commenced when 15% of the proposed work is completed.

- 7.17 Regulation 15 sets out the definition of a complex building as a building constructed on the same shared foundation plinth or podium as any other building or structure; a building with more than one storey below ground level or a building where its proposed use is primarily as a public building with capacity for 100 or more visitors. By a “public building” the Regulation is referring to a shop or shopping centre; premises where food or drink are sold for consumption on the premises, including a nightclub, social club or dance hall; a stadium, theatre, cinema, concert hall; a sports ground; an exhibition hall or conference centre; or a hospital or premises for the provision of health care.
- 7.18 Regulation 15 further provides for a notice before starting any work on site and a further notice to the local authority when the person carrying out the work is satisfied the building work done meets the new definition of commencement. This notice replaces a commencement notice as defined under regulation 16 of the 2010 Regulations and is necessary to reflect the commencement definition prescribed in law is more stringent than the definition previous outlined in guidance.
- 7.19 Regulation 15 also provides for the local authority to reject the “commenced” work notice and a right of appeal against a rejection.
- 7.20 Regulation 16 of this instrument makes amendments to the 2010 Regulations to support the strengthening of the enforcement set out in the 1984 Act. In particular, it provides for the content of the new compliance notices and stop notices.
- 7.21 Regulation 18 of this instrument amends the Building (Local Authority Charges) Regulations 2010 to make provision in relation to the repeal of deposit of plans in England and its replacement with applications for building control approval.
- 7.22 Regulation 19 of this instrument amends the Energy Performance of Buildings (England and Wales) Regulations 2012 to include the new definition of the Building Safety Regulator.
- 7.23 Regulation 20 of this instrument amends the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 to make amendments which are consequential on the changes in this instrument.
- 7.24 Regulation 21 of this instrument makes consequential amendments to the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 to reflect the changes made to the building control process in this instrument.
- 7.25 The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 establish a Responsible Actors Scheme (RAS) for developers for the purpose of improving the safety and standard of buildings. Members of the scheme will be required to identify and remediate (or pay for the remediation of) life-critical fire safety defects in residential buildings over 11m in height, which they developed or refurbished in England between 1992 and 2022.
- 7.26 It also establishes prohibitions, which will be used in relation to developers (and persons they control) who are eligible for the RAS and opt not to join or comply with the scheme’s conditions. The instrument establishes a planning prohibition to prevent a prohibited person carrying out major development, and a building control prohibition that prevents a prohibited person from receiving building control approval.
- 7.27 Regulations 22 to 25 of this instrument make transitional arrangements in relation to some of the amendments made. Regulation 22 lists the parts of the legislation that do not apply to building work that has started, or had plans deposited, or had a building notice given to a local authority, before the new regimes start date. These parts are

regulations 4, 6, 7, 8, 9, 11, 12, 13 and 15. The disapplication of regulations 6, 13, 15 and 18 ceases on the 6 April 2024 if the building work has not started, using the current definition of started, and not the new definition of commencement.

- 7.28 Regulation 23 clarifies that appeals and applications to the magistrates' court made before the regime start date will be carried out without regulation 10 of this instrument applying.
- 7.29 Regulation 24 disapplies regulations 22 and 23 of this instrument from higher-risk buildings, unless the transitional, supplementary and saving provisions of the Building (Higher-Risk Building Procedures) (England) Regulations 2023 provide otherwise.
- 7.30 Regulation 25 defines terms and defines commencement for the purposes of transition.

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 There are no plans to consolidate the 2010 Regulations in the immediate future.

10. Consultation outcome

- 10.1 The Department conducted a public consultation on implementing the new building control regime for higher-risk buildings and wider changes proposed to the building regulations for all buildings. The duration was 12 weeks from 20 July 2022 to 12 October 2022. This consultation sought views on the proposals that have been included in this instrument. A full consultation response had been prepared and published on GOV.UK¹.
- 10.2 The consultation received responses from a range of stakeholders, including building control bodies, fire and rescue authorities, trade representation organisations, developers, architects, surveyors and asset management companies. Responses were received online and via email.
- 10.3 The Department has also conducted further consultation through stakeholder engagement with those who would be affected by the proposed changes, including the Building Safety Regulator, local authorities, trade bodies and representatives in the construction sector.

Dutyholder roles and responsibilities

- 10.4 There were 122 responses on new dutyholder roles, responsibilities and competence. On average approximately 69% of respondents agreed with the proposals across eight questions. The proposals included identifying and placing duties on those 'dutyholders' who procure, design, and undertake building work to which the 2010 Regulations apply. The dutyholders will be the client, the principal designer, the designer, the principal contractor, and the contractors. Dutyholders will need to: plan, manage and monitor the design work and the building work so that it complies with all relevant building regulations requirements; cooperate and communicate with each other; coordinate their work; and liaise with and provide information to, other dutyholders. They will also need

¹ [Consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings](#)

to have the competence (the skills, knowledge, experience and behaviours) for the work they are to undertake and make sure those they appoint have the right competencies. Particular concern was raised about the availability and affordability of insurance if the regulations included the proposed strict liability duty for designers and principal designers to ensure the design work, if built, would be in compliance with all relevant building regulations. The implementation of a strict liability duty has not been included in this instrument to facilitate further consideration of whether the imposition of the duty is appropriate.

- 10.5 There were 122 responses to the questions on the client and other dutyholders obligations when making appointments. On average, across four questions, approximately 53% agreed with the proposals. Dutyholders must keep a record of the steps they took to satisfy themselves that the appointed persons have the relevant competence for the roles, including consideration of any previous serious infractions. The proposals outlined in the consultation have been included in this instrument.

Definition of commencement of building work

- 10.6 There were 51 responses to the section on wider changes to the building regulations to align the existing system with the new system. The majority of respondents (52% for the new buildings definition and 55% for the existing buildings definition) agreed with all the questions that were posed. Sixty-one per cent provided detailed comments. The issues raised fall into two categories: general concerns applicable to all proposed definitions of commencement, and specific concerns with the proposed definitions of commencement of work.
- 10.7 The key general issues, raised by 18% of respondents, was that the definitions of commencement posed are too far into the building process which will have a number of consequential effects on the progress of construction, such as the inability to meet the definition within the proposed 3-year timeframe and the risk of building work completed before meeting the definition of commencement being unregulated.
- 10.8 Based on consultation feedback and wider stakeholder engagement the definition of the commencement of work proposed in the consultation has been amended to provide a more straightforward definition that better reflects different types of building work, particularly for building work that is considered complex.

Regulator's notice

- 10.9 There were 47 responses in relation to regulatory notices. On average, across three questions 78% of respondents agreed with proposals. The 2022 Act allows developers to ask the Building Safety Regulator to provide building control oversight for non-higher-risk building work projects if they are part of the same development site as a higher-risk building. The questions sought feedback on the information that must be included in the regulators notice and the grounds on which a local authority could refuse a regulator's notice. The proposals outlined in the consultation have been included in this instrument.

New procedures for building control approval applications for buildings that are not higher-risk buildings

- 10.10 There were 51 responses to the section on new procedures for building control approval applications for buildings that are not higher-risk buildings. The majority of respondents (57%) agreed with the proposal of having a route of appeal for dutyholders who consider that the timeframe for determining their application has been extended beyond

what they consider to be reasonable. While some respondents considered a route of appeal to be redundant as the application can be resubmitted after rejection, there was sufficient support for including a route of appeal in the regulations. The proposals outlined in the consultation, including the route of appeal, has been provided in this instrument.

Amendments to the 2010 regulations in application to higher-risk buildings

- 10.11 There were 51 responses to the section on the amendment to the 2010 regulations in application to higher-risk buildings. There were various proposals outlined in the section including: removing the exemption from the procedural requirements of the 2010 Regulations for the Mayor's Office for Policing and Crime; enabling the Building Safety Regulator to disapply or relax energy efficiency requirements in relation to higher-risk building work; removing the exemptions from certain building regulations for buildings prescribed in class 6 and class 7 of schedule 2 of the 2010 Regulations; disapplying the procedural building control requirements outlined in the 2010 Regulations in relation to higher-risk building work; amending the notification requirements in the 2010 regulations in relation to higher-risk building work so that notices are submitted to the Building Safety Regulator, rather than the local authority; and disapplying the testing and sampling powers in the 2010 regulations so they can be replaced by commencing section 33 of the 1984 act. There was considerable support for all proposals outlined in this section and the proposals have been included in this instrument, apart from the removal of the exemption of class 6 and 7 buildings from certain requirements of the building regulations. Risks were raised with regard to the appropriateness of this measure and further consideration is required before the proposed exemption is taken forwards.

11. Guidance

- 11.1 The Building Safety Regulator will produce guidance on relevant provisions included within this statutory instrument.

12. Impact

- 12.1 This policy is likely to have impacts on business, building owners, residents, building control inspectors and building control bodies, as well as professionals involved in the design and construction of buildings.
- 12.2 There is no impact on the public sector.
- 12.3 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.
- 12.4 No wider impacts are expected to disproportionately affect protected demographics, the environment, or business.

13. Regulating small business

- 13.1 Small businesses will be subject to the requirements placed by this instrument, because of the need to ensure equal standards across the built environment.
- 13.2 For the majority of these groups, the impacted bodies will be companies of a size sufficient to take on the defined roles in relation to the buildings in scope, and the majority of the burdens of the new regime will fall to such bodies. However, there will also be an impact on individuals, including building control professionals and designers

and contractors who are operating as self-employed sub-contractors. These individuals may face a comparatively higher burden in meeting and demonstrating compliance with the required competence standards.

- 13.3 Compliance with duties under part 3 of the 2022 Act, however, is key to delivering safety in the design and construction of higher-risk buildings. Any exemptions for individuals, or for small and microbusinesses, would involve an unacceptable compromise regarding the safe design and construction of these higher-risk buildings. Such groups must be able to demonstrate compliance with the duties under part 3 of the 2022 Act, not least to avoid creating loopholes where unscrupulous companies might look to sub-contract to abrogate their own responsibilities to ensure that the part 3 duties are met.
- 13.4 The wider dutyholder requirements are likely to have a proportionately larger impact on smaller businesses. These requirements relate to non-higher-risk buildings and a larger proportion of these will be constructed by smaller construction firms. However, compliance with the wider dutyholder requirements is key to delivering safety in the design and construction of non-higher-risk buildings.
- 13.5 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to be clear about the requirements that are being enforcements, while taking into consideration feedback from the industry.

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 Marta Musolino at the Department for Levelling Up, Housing and Communities. Email: 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.