
STATUTORY INSTRUMENTS

2023 No. 911

**The Building Regulations etc. (Amendment)
(England) Regulations 2023**

PART 2

Amendment of the Building Regulations 2010

Other appeals

10. After regulation 18 (unauthorised building work) of the 2010 Regulations insert—

“Appeal against refusal to grant certain certificates

18A.—(1) A person (“the appellant”) who has—

- (a) notified a local authority under regulation 16(4) and the authority has refused to give a certificate under regulation 17 (completion certificates);
- (b) notified a local authority under regulation 16(5) and the authority has refused to give a certificate under regulation 17A (certificate for building occupied before work is completed); or
- (c) applied to a local authority under regulation 18(2) (unauthorised building work) for a certificate and the authority has refused to give the certificate,

may appeal to the regulator against the decision of the local authority to refuse to provide the certificate provided the appeal is made within 21 relevant days beginning with the day after the day on which the local authority notifies the appellant of the refusal.

(2) The regulator may allow an appeal under paragraph (1) only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable; or
- (d) that the decision was made without following the procedures set out in the Act or regulations made under that Act.

(3) If the regulator allows an appeal it may quash or vary the decision.

(4) An appellant aggrieved with the decision of the regulator on an appeal under this regulation may appeal that decision to the First-tier Tribunal within 21 relevant days beginning with the day after the day on which the regulator notifies the appellant of its decision.

(5) The First-tier Tribunal may allow an appeal referred to in paragraph (4) only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the decision was based on an error of fact;

- (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable; or
 - (d) that the decision was made without following the procedures set out in the Act or regulations made under that Act.
- (6) If the First-tier Tribunal allows an appeal it may quash or vary the decision.

Appeal in relation to sections 20(5) or 39 of the Act

18B.—(1) An appeal to the regulator under section 20(5) of the Act must be made within 21 relevant days beginning with the day after the day on which the local authority notifies the person of its decision.

(2) Where a person who is aggrieved with the decision of the regulator given on an appeal under section 20(5) or 39 of the Act wishes to appeal that decision by virtue of section 43A(3) of the Act they may appeal to the First-tier Tribunal provided the appeal is made within 21 relevant days beginning with the day after the day on which the regulator notifies them of its decision.

(3) The First-tier Tribunal may allow an appeal referred to in paragraph (2) only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable; or
 - (d) that the decision was made without following the procedures set out in the Act or regulations made under that Act.
- (4) If the First-tier Tribunal allows an appeal it may quash or vary the decision.

Appeal to the First-tier Tribunal in relation to certain decisions

18C.—(1) Where, in relation to work which is not higher-risk building work, a person (“the appellant”) has—

- (a) notified the regulator under regulation 16(4) and the regulator has refused to give a certificate under regulation 17 (completion certificates);
- (b) notified the regulator under regulation 16(5) and the regulator has refused to give a certificate under regulation 17A (certificate for building occupied before work is completed); or
- (c) applied to the regulator under regulation 18(2) (unauthorised building work) for a certificate and the regulator has refused to give the certificate,

they may appeal to the First-tier Tribunal against the decision of the regulator provided the appeal is made within 21 relevant days beginning with the day after the day on which the regulator notifies the appellant of the refusal.

(2) An appeal to the First-tier Tribunal under section 19(4), 20(5), 21(4), 22(4) or 39 of the Act must be made within 21 relevant days beginning with the day after the day on which the building control authority notifies the person of its decision.

(3) The First-tier Tribunal may allow an appeal referred to in paragraph (1) or (2) only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the decision was based on an error of fact;

- (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable; or
 - (d) that the decision was made without following the procedures set out in the Act or regulations made under that Act.
- (4) If the First-tier Tribunal allows an appeal referred to in paragraph (1) or (2) it may quash or vary the decision.

Application to the First-tier Tribunal in relation to certain decisions

18D.—(1) At least five days before making an application to the First-tier Tribunal under section 21(3) or (6), 24(2), 25(2) or (5), 33(6) or 36(3) of the Act the person proposing to make an application (“the applicant”) must notify the building control authority of their intention to make the application.

(2) An application to the First-tier Tribunal under section 21(3) or (6), 24(2), 25(2) or (5), 33(6) or 36(3) of the Act must be made within 21 relevant days beginning with the day after the day on which the applicant notifies the building control authority under paragraph (1).

(3) If the First-tier Tribunal allows an appeal it may quash or vary the decision.

Appeals under section 101A of the Act

18E.—(1) A person aggrieved with the refusal of a local authority to consider an application for building control approval, an initial notice or an amendment notice on the grounds that all or part of the work to which the application or notice relates is higher-risk building work may appeal to the Secretary of State provided the appeal is made within 28 relevant days beginning with the day after the day on which the local authority refuses to consider the application.

(2) An appeal to the Secretary of State under section 101A of the Act must be made in writing, signed by the person who made the original application or one of the persons who gave the original initial notice or amendment notice (in this regulation “the appellant”) and must include the following information—

- (a) the name, address, telephone number and (if available) email address of the appellant;
- (b) a statement explaining why the appellant considers the work proposed in the original application or notice does not include higher-risk building work;
- (c) where the appellant is an approved inspector, a statement confirming the client agrees to the appeal being made.

(3) In addition to the information provided for in paragraph (2) the appeal must be accompanied by—

- (a) a copy of the original application or notice given to the local authority (including all documentation that accompanied the application or notice);
- (b) all the information provided to the local authority in relation to the application or notice;
- (c) all the correspondence with the local authority in relation to that application or notice;
- (d) a copy of the notice sent to the regulator under paragraph (4).

(4) At least two working days before submitting an appeal under section 101A(2) of the Act the appellant must give notice to the regulator of their intention to do so.

(5) Where the appellant submits an appeal under section 101A of the Act through electronic facilities provided by the Secretary of State for that purpose, they are taken to have consented to the use of electronic communications for all purposes relating to the appeal that are capable of being carried out electronically.

(6) The deemed consent in paragraph (5) may be revoked by the appellant giving the Secretary of State two weeks' notice in writing specifying that the notice is given under this regulation.

(7) An appeal under section 101A of the Act is to be determined by consideration of written representations.

(8) The Secretary of State must give the local authority which refused to consider the original application or notice the opportunity to make written representations in relation to the appeal.

(9) The Secretary of State may give any other person an opportunity to make written representations in relation to the appeal.

(10) The Secretary of State may, by notice in writing, require the local authority in question to provide specified information, or provide copies of specified documents, by the date specified in the notice (that date must be no fewer than 7 days after the date the notice is given).

(11) Before determining the appeal the Secretary of State may—

- (a) hold any meeting with the appellant, the local authority or any other person,
- (b) undertake any site visit,

as the Secretary of State considers appropriate.

(12) The Secretary of State must determine the appeal within 8 weeks of the date on which the appeal is received and the decision in relation to the appeal must be given in writing to the appellant.

(13) For the purposes of section 101A(6) of the Act, an appeal to the High Court under section 101A(6) of the Act may be made within 28 relevant days beginning with the day after the day on which the Secretary of State gives the decision to the appellant under paragraph (12).

(14) The Secretary of State may appoint a person to determine the appeal instead of the Secretary of State.

(15) At any time before a person appointed under this regulation has determined the appeal the Secretary of State may—

- (a) revoke that person's appointment;
- (b) appoint another person to determine the appeal instead.

(16) A person appointed under paragraph (14) has the same powers and duties in relation to determination of an appeal under section 101A of the Act as the Secretary of State and, in particular, where the appeal is determined by a person appointed under this regulation their decision is to be treated as the decision of the Secretary of State.”.