

2023 No. 965

BUILDING AND BUILDINGS, ENGLAND AND WALES

The Building Safety (Regulator’s Charges) Regulations 2023

Made - - - - *5th September 2023*

Laid before Parliament *6th September 2023*

Coming into force - - *1st October 2023*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 28 and 168(2)(a) of the Building Safety Act 2022(a) and sections 105B and 120A(2)(a) of the Building Act 1984(b).

The Secretary of State makes these Regulations to give effect to proposals made by the regulator(c) under section 7(2) of the Building Safety Act 2022 after consulting in accordance with section 7(3) of that Act, and section 120B(1) of the Building Act 1984 after consulting in accordance with section 120B(2) of that Act.

Citation, extent, application and commencement

1.—(1) These Regulations may be cited as the Building Safety (Regulator’s Charges) Regulations 2023.

(2) These Regulations extend to England and Wales.

(3) Subject to paragraph (4), these Regulations apply in England.

(4) Regulation 3(2)(s) applies in England and Wales.

(5) These Regulations come into force on 1st October 2023.

Interpretation

2. In these Regulations—

“the 1984 Act” means the Building Act 1984;

“the 2022 Act” means the Building Safety Act 2022;

“chargeable function” means a function set out in regulation 3(2);

“charging scheme” means a scheme in which the regulator sets out the charges to be recovered for or in connection with the performance of the chargeable functions;

(a) 2022 c. 30.

(b) 1984 c. 55. Sections 105B, 120A and 120B were inserted by section 57 of, and paragraph 77 of Schedule 5 to, the 2022 Act.

(c) See definition of regulator in section 2(1) of the 2022 Act.

“the HRB Regulations” means the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023^(a).

Chargeable functions

3.—(1) The regulator may recover charges for or in connection with the performance of a chargeable function.

- (2) Each of the following functions is a chargeable function—
- (a) the determination of an application for building control approval^(b);
 - (b) the determination of an application under section 8(3A) of the 1984 Act^(c);
 - (c) any action taken by the regulator under subsections (2), (3) or (5)(a) of section 19 of the 1984 Act^(d);
 - (d) any action taken by the regulator under subsections (1) or (3) of section 22 of the 1984 Act^(e);
 - (e) any action taken by the regulator under section 25(3) of the 1984 Act^(f);
 - (f) the exercise by the regulator of its powers under—
 - (i) subsections (1) and (2) of section 33 of the 1984 Act^(g);
 - (ii) section 33(4) of the 1984 Act; or
 - (iii) regulation 46 of the HRB Regulations or any other regulations made under paragraph 1G of Schedule 1 to the 1984 Act^(h);
 - (g) any action taken by the regulator in relation to a notification under regulation 18(3) of the HRB Regulations;
 - (h) in relation to a change control application—
 - (i) any notification given by the regulator under regulation 22 of the HRB Regulations;
 - (ii) the consultation of a person under regulation 23 of the HRB Regulations; or
 - (iii) the determination of a change control application under regulation 24 of the HRB Regulations;
 - (i) the determination of—
 - (i) a partial completion certificate application under regulation 45 of the HRB Regulations; or
 - (ii) a completion certificate application under regulation 44 of the HRB Regulations;
 - (j) the determination of a regularisation certificate application under regulation 47 of the HRB Regulations;
 - (k) any action taken by the regulator—
 - (i) in relation to the giving of a notice under paragraph 2(4), 4(7) (including where paragraph 4(7) is applied by paragraph 8(4)) or 5(7) (including where paragraph 5(7) is applied by paragraph 10(4) or 11(4)) of Schedule 3 to the HRB Regulations;
 - (ii) in relation to any notice or document submitted to the regulator under paragraph 2(3), 2(5), 4(5) (including where paragraph 4(5) is applied by paragraph 8(4)), 5(5)

(a) S.I. 2023/909.

(b) See definition of building control approval in paragraph 1B(2) of Schedule 1 to the 1984 Act.

(c) Section 8 was amended by paragraph 11 of Schedule 5 to the 2022 Act.

(d) Section 19 was amended by paragraph 21 of Schedule 5 to the 2022 Act.

(e) Section 22 was amended by paragraph 24 of Schedule 5 to the 2022 Act.

(f) Section 25 was amended by paragraph 27 of Schedule 5 to the 2022 Act.

(g) Section 33 was amended by paragraph 30 of Schedule 5 to the 2022 Act.

(h) Paragraph 1G was inserted into Schedule 1 by section 33 of the 2022 Act.

(including where paragraph 5(5) is applied by paragraph 10(4) or 11(4)), 9(3) or 9(4) of Schedule 3 to the HRB Regulations;

- (l) any action taken by the regulator in relation to—
 - (i) the giving of a regulator’s notice under section 91ZB(2) of the 1984 Act(a); or
 - (ii) work for which the regulator is the building control authority under section 91ZB of the 1984 Act;
- (m) the registration of a higher-risk building under section 78 of the 2022 Act;
- (n) the determination of an application for a building assessment certificate under section 81 of the 2022 Act;
- (o) the review of a safety case report prepared by the principal accountable person under section 85 of the 2022 Act;
- (p) the determination of an application for registration of a person as a building inspector and maintenance of the register under section 58C of the 1984 Act, including the variation or cancellation of a registration under section 58E of that Act(b);
- (q) the determination of an application for registration of a person as a building control approver and maintenance of the register under section 58O of the 1984 Act, including the variation or cancellation of a registration under section 58Q of that Act;
- (r) the inspection by the regulator of a local authority or a registered building control approver under section 58Z8 of the 1984 Act;
- (s) the exercise by an authorised officer of the powers conferred by virtue of Schedule 2 to the 2022 Act;
- (t) any action taken by the regulator with a view to or in connection with—
 - (i) securing compliance with a building enactment(c) or a requirement imposed by virtue of such an enactment; or
 - (ii) the imposition of a sanction in respect of a contravention of a building enactment or requirement imposed by virtue of such an enactment;
- (u) the review of a decision of the regulator which, pursuant to section 25 of the 2022 Act, is a prescribed decision;
- (v) the conduct of an appeal against a decision or an action of a local authority or registered building control approver under the 1984 Act or regulations made under that Act;
- (w) any action taken in order to respond to an appeal against a decision of the regulator.

(3) In this regulation “change control application”, “completion certificate application”, “partial completion certificate application” and “regularisation certificate application” have the meanings given in the HRB Regulations.

(4) In relation to—

- (a) any case to which Schedule 3 to the HRB Regulations applies, any reference in paragraph (2) to the HRB Regulations is to be treated as a reference to those Regulations as modified, in relation to that particular case, by Schedule 3 to the HRB Regulations;
- (b) any case to which paragraph 5, 10 or 11 of Schedule 3 to the HRB Regulations applies—
 - (i) any reference to a completion certificate application is to be treated as a reference to an application for a transfer and completion certificate;
 - (ii) any reference to a partial completion certificate application is to be treated as a reference to an application for a transfer and partial completion certificate.

(a) Section 91ZB was inserted by section 32 of the 2022 Act.
(b) Sections 58C to 58Z8 was inserted by section 42 of the 2022 Act.
(c) See definition of building enactment in section 24(2) of the 2022 Act.

Charging scheme

4.—(1) The amount of any charge that is payable under these Regulations must be determined by the regulator in accordance with a scheme made and published by the regulator.

(2) The regulator must ensure that, taking one year with another, the charges payable under the charging scheme as far as possible equate to the costs incurred by the regulator in performing the chargeable functions.

(3) The regulator may amend the charging scheme from time to time.

(4) The regulator must publish the charging scheme or any amendment to the scheme on its website at least seven days before the date on which the scheme or the amendment is to come into effect.

Charges to be paid by the client

5.—(1) The client must pay the charge for the chargeable functions under sub-paragraphs (a) to (l) of regulation 3(2), which are performed in relation to the client's project.

(2) In this regulation—

“client” means any person for whom a project is carried out; and

“project” means a project that includes or will include any work for which the regulator is the building control authority^(a) and includes all planning work, design work, management or other work involved in the project until the regulator issues a certificate in relation to the work following its completion.

Charges to be paid by the principal accountable person etc

6.—(1) The principal accountable person^(b) for a higher-risk building must pay the charge for the chargeable functions under sub-paragraphs (m) to (o) of regulation 3(2), which are performed in relation to that higher-risk building.

(2) The principal accountable person of a higher-risk building or part of a higher-risk building, must pay the charge for the chargeable functions under sub-paragraphs (c) and (f)(ii) and (iii) of regulation 3(2), which are performed in relation to any part of that building for which a completion certificate or a partial completion certificate has been issued.

(3) Where the chargeable function under sub-paragraph (j) of regulation 3(2) is performed in relation to any part of a higher-risk building for which a completion certificate or a partial completion certificate has been issued then the principal accountable person of the higher-risk building or the accountable person^(c) of the part of the higher-risk building must pay the charge.

Charges for local authorities and the building control profession

7.—(1) The person who makes the application must pay the charge for the performance of the chargeable functions under sub-paragraphs (p) or (q) of regulation 3(2), as applicable.

(2) A local authority or a registered building control approver, which is the subject of an inspection under section 58Z8 of the 1984 Act, must pay the charge arising from the performance of the chargeable function under sub-paragraph (r) of regulation 3(2).

(a) See section 121A of the 1984 Act for the definition of building control authority. Section 121A was inserted by section 32 of the 2022 Act.

(b) See section 73 of the 2022 Act for the definition of principal accountable person.

(c) See section 72 of the 2022 Act for the definition of accountable person.

Charges for monitoring and regulatory intervention to ensure compliance

8.—(1) Subject to paragraphs (3) and (4), a person must pay the charge arising from the performance of the chargeable functions under sub-paragraphs (s) and (t) of regulation 3(2) if the regulator has reasonable grounds to believe that the person may contravene, is contravening or has contravened a building enactment or a requirement imposed by virtue of a building enactment.

(2) A charge for the performance of a chargeable function under sub-paragraphs (s) or (t) of regulation 3(2) must not include any costs which are connected with a criminal investigation or prosecution and which are incurred, in either case, after the date on which any information is laid by the regulator.

(3) Where a charge is payable under paragraph (1) by—

- (a) a person who was acting in their capacity as an employee, that person's employer must pay the charge; or
- (b) a resident or owner of a residential unit in an occupied higher-risk building, the principal accountable person for that building must pay the charge.

(4) A charge is not payable under paragraph (1) in relation to an investigation under section 58H, 58T or 58Z3 of the 1984 Act by—

- (a) a registered building inspector if the regulator's investigation concludes that they have not breached the code of conduct^(a) or been guilty of professional misconduct^(b); or
- (b) a registered building control approver if the regulator's investigation concludes that they have not contravened the professional conduct rules^(c) or the operational standards rules^(d).

Charges for reviews and appeals

9.—(1) A person who requests a review under section 25 of the 2022 Act must pay the charge for the performance of the chargeable function under regulation 3(2)(u).

(2) If on the conclusion of the review under paragraph (1) the regulator does not uphold their original decision, the regulator—

- (a) must refund any charges in relation to the review paid by the person who requested the review; and
- (b) must not recover any further charges relating to the review.

(3) A person who makes an appeal must pay the charge for the performance of the chargeable function under regulation 3(2)(v).

(4) If on the conclusion of the appeal under paragraph (3) the regulator determines the appeal in favour of the appellant, the regulator—

- (a) must refund any charges in relation to the appeal paid by the appellant; and
- (b) must not recover any further charges relating to the appeal.

(5) A person who makes an appeal must pay the charge for the performance of the chargeable function under regulation 3(2)(w) if—

- (a) the person withdraws the appeal; or
- (b) the tribunal confirms the decision of the regulator.

(a) Prepared and published under section 58F of the 1984 Act.
(b) See definition of professional misconduct in section 58H of the 1984 Act.
(c) Prepared and published under section 58R of the 1984 Act.
(d) Prepared and published under section 58Z of the 1984 Act.

Charges by the regulator in relation to costs of relevant authorities

10.—(1) Where a person is required to pay charges for the performance of a chargeable function under these Regulations, the regulator may also recover charges from that person for any section 13 expenditure.

(2) In this regulation “section 13 expenditure” means any costs paid by the regulator for anything done by a relevant authority (within the meaning of section 13 of the 2022 Act) in connection with the chargeable function as a result of any action taken by the relevant authority to comply with—

- (a) a request of the regulator under section 13(1) of the 2022 Act; or
- (b) a direction of the regulator under section 13(2) of the 2022 Act.

Payment of charges etc

11.—(1) Subject to paragraph (3), a person must pay the charge for or in connection with the performance of a chargeable function for which they are liable within 30 days from the date on which the request for payment of that charge is issued to them by the regulator.

(2) Any request for payment under paragraph (1) must include—

- (a) a statement of the work done and the costs incurred by the regulator in the performance of the chargeable function;
- (b) a statement of any work done and the costs incurred by a relevant authority (within the meaning of section 13 of the 2022 Act) or other person for or in connection with the performance of the chargeable function;
- (c) the period to which any statement of work under sub-paragraph (a) relates; and
- (d) the provision of the charging scheme under which the charge has been determined.

(3) Where—

- (a) an application is submitted to the regulator, and the charging scheme provides for a charge in relation to that application to be paid upfront, the person submitting the application must pay that charge when they submit the application;
- (b) a notification or request is sent to the regulator, and in relation to which the charging scheme provides for a charge to be paid upfront, the person sending the notification or request must pay that charge when they send the notification or request.

(4) The regulator may require that the total amount of charges for the performance of a chargeable function is paid before the regulator performs that chargeable function or issues a notification of the outcome of its determination or a certificate, as applicable.

(5) The regulator may refund, in whole or in part, any charge paid.

Exception for building work solely required for disabled persons

12.—(1) Subject to paragraph (2), in relation to an existing dwelling which is, or is to be, occupied by a disabled person as a permanent residence, the regulator must not recover any charges for building work that is solely—

- (a) for the purpose of providing means of access for the disabled person to or from the dwelling or any part of it; or
- (b) for the purpose of providing accommodation or facilities designed to secure the greater health, safety, welfare or convenience of the disabled person.

(2) Building work does not fall within paragraph (1)(b) unless the regulator is satisfied that the work consists of—

- (a) the adaptation or extension of existing accommodation or an existing facility or the provision of alternative accommodation or an alternative facility where the existing accommodation or facility could not be used by the disabled person or could be used by the disabled person only with assistance; or

- (b) the provision or extension of a room which is or will be used solely—
 - (i) to provide medical treatment to the disabled person that cannot reasonably be carried out in any other room in the dwelling; or
 - (ii) to store medical equipment for the use of the disabled person; or
 - (iii) to provide sleeping accommodation for a carer where the disabled person requires 24-hour care.

(3) In relation to an existing building to which members of the public are admitted the regulator must not recover charges for building work that is solely—

- (a) for the purpose of providing means of access for disabled persons to or from the building or any part of it; or
- (b) for the provision of facilities designed to secure the greater health, safety, welfare or convenience of disabled persons.

(4) In this regulation—

“building”—

- (a) where a chargeable function is performed in relation to the construction of a higher-risk building, has the meaning given in regulation 4 of the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023(a);
- (b) in any other case, has the meaning given in regulation 2 of the Building Regulations 2010(b);

“building work” means any higher-risk building work or work for which the regulator is the building control authority pursuant to a regulator’s notice(c);

“disabled person” means a person who has a disability within the meaning given by section 6 of the Equality Act 2010(d);

“dwelling” includes a dwelling-house and a flat, and “dwelling-house” and “flat” have the same meanings as in the Building Regulations 2010.

Amendment of the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023

13.—(1) The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023(e) is amended as follows.

- (2) Omit regulation 20.
- (3) Omit regulation 21.

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

5th September 2023

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

(a) S.I. 2023/275.
(b) S.I. 2010/2214.
(c) See section 91ZA of the 1984 Act for the definition of “higher-risk building work”, section 91ZB for the definition of “regulator’s notice” and section 121A of the 1984 Act for the definition of building control authority. Those sections were inserted by section 32 of the 2022 Act.
(d) 2010 c. 15.
(e) S.I. 2023/315.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out provisions in relation to charges of the building safety regulator.

Regulation 3 provides that the regulator may recover charges for or in connection with the chargeable functions which are set out in regulation 3(2). Regulation 4 provides that the amount of any charge must be determined by the regulator in accordance with a scheme which the regulator makes and publishes on its website.

Regulations 5 to 10 set out who is required to pay charges for the performance of the chargeable functions.

Regulation 11 sets out when the payment of the charge has to be made.

Regulation 12 provides for an exemption from charges for building work carried out to an existing dwelling solely for disabled persons.

Regulation 13 revokes two regulations relating to fees in the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023.

A full impact assessment has not been produced for this instrument. There are three impact assessments for implementing the changes to the building safety regime, they were published alongside the explanatory memorandum for S.I.s 2023/906, 2023/907 and 2023/911 at www.legislation.gov.uk.

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