

2023 No. 993 (C. 59)

BUILDING AND BUILDINGS

**The Building Safety Act 2022 (Commencement No. 5 and
Transitional Provisions) Regulations 2023**

Made - - - - *11th September 2023*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 170(2)(b), (4)(c), (5) and (6) of the Building Safety Act 2022(a).

Citation and interpretation

1.—(1) These Regulations may be cited as the Building Safety Act 2022 (Commencement No. 5 and Transitional Provisions) Regulations 2023.

(2) In these Regulations—

“the 1984 Act” means the Building Act 1984(b);

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

“building control authority” has the meaning given in section 121A of the 1984 Act(c);

“building work” has the same meaning as in the Building Regulations 2010(d);

“initial notice” has the meaning given in section 47 of the 1984 Act.

Provisions coming into force on 1st October 2023

2. The following provisions of the 2022 Act come into force on 1st October 2023—

- (a) section 4 (duty to facilitate building safety), for all remaining purposes;
- (b) section 10 (committee on industry competence);
- (c) section 19 (annual report about information provided under mandatory reporting requirements);
- (d) section 21 (report on certain safety-related matters);
- (e) section 26 (right of appeal: requirement for review before appeal);
- (f) section 32 (building control authorities), for all remaining purposes;
- (g) section 36 (lapse of building control approval etc), for all remaining purposes;
- (h) section 38 (compliance and stop notices), for all remaining purposes;
- (i) section 39 (breach of building regulations), for all remaining purposes;
- (j) section 40 (liability of officers of body corporate etc);

(a) 2022 c. 30.

(b) 1984 c. 55.

(c) Section 121A was inserted into the 1984 Act by section 32 of the 2022 Act.

(d) S.I. 2010/2214 as amended by S.I. 2012/3119, 2013/1959, 2014/110, 2015/767, 2016/285, 2016/1274, 2018/1230, 2021/1391, 2021/1392, 2022/603, 2022/984, 2023/520 and 2023/911.

- (k) section 42 (regulation of building control profession), so far as it relates to inserting Part 2A into the 1984 Act excluding sections 58H to 58L, 58T to 58W and 58Z1 to 58Z8 of that Act;
- (l) section 46 (higher-risk building work: registered building control approvers), for all remaining purposes;
- (m) section 54 (functions under Part 3 of Building Act 1984);
- (n) section 55 so far as it relates to the following paragraphs of Schedule 5 to the 2022 Act (minor and consequential amendments)—
 - (i) paragraph 4, for all remaining purposes;
 - (ii) paragraph 5, for all remaining purposes;
 - (iii) paragraphs 7 and 8;
 - (iv) paragraph 11, for all remaining purposes;
 - (v) paragraph 12, for all remaining purposes;
 - (vi) paragraph 13, for all remaining purposes;
 - (vii) paragraph 14, for all remaining purposes;
 - (viii) paragraph 15, for all remaining purposes;
 - (ix) paragraphs 18 to 21;
 - (x) paragraph 22, for all remaining purposes;
 - (xi) paragraphs 23 to 37;
 - (xii) paragraph 39;
 - (xiii) paragraph 40, for all remaining purposes;
 - (xiv) paragraph 41;
 - (xv) paragraph 42, for all remaining purposes;
 - (xvi) paragraph 43;
 - (xvii) paragraph 44(1), so far as it relates to paragraph 44(2);
 - (xviii) paragraph 44(2);
 - (xix) paragraph 45;
 - (xx) paragraph 46, for all remaining purposes;
 - (xxi) paragraphs 47 to 49;
 - (xxii) paragraph 54;
 - (xxiii) paragraph 55, for all remaining purposes;
 - (xxiv) paragraph 57, for all remaining purposes;
 - (xxv) paragraphs 58 to 66;
 - (xxvi) paragraphs 68 to 70;
 - (xxvii) paragraphs 72 and 73;
 - (xxviii) paragraph 74, for all remaining purposes;
 - (xxix) paragraph 76, for all remaining purposes;
 - (xxx) paragraph 79;
 - (xxxi) paragraph 80, for all remaining purposes;
 - (xxxii) paragraph 81, for all remaining purposes;
 - (xxxiii) paragraph 83, for all remaining purposes;
 - (xxxiv) paragraph 84, for all remaining purposes;
 - (xxxv) paragraph 86;
 - (xxxvi) paragraph 90;

- (o) section 56 (appeals) so far as it relates to the following paragraphs of Schedule 6 to the 2022 Act (appeals and other determinations)—
 - (i) paragraphs 1 to 29;
 - (ii) paragraph 30, for all remaining purposes;
- (p) section 76 (requirement for completion certificate before occupation);
- (q) section 77 (occupation: registration requirement);
- (r) section 78 (registration of higher-risk buildings), for all remaining purposes;
- (s) section 99 (compliances notices);
- (t) section 100 (compliance notices: supplementary);
- (u) section 103 (appeals against compliance notice etc);
- (v) section 104 (appeals against decisions of the regulator made under this Part);
- (w) section 105 (appeals against decisions of the regulator made under regulations);
- (x) section 106 (appeals: supplementary);
- (y) section 161 (liability of officers of body corporate etc).

Transitional provisions in relation to plans deposited before 1st October 2023

3.—(1) Subject to paragraph (2), notwithstanding the repeal of section 16 of the 1984 Act by paragraph 20 of Schedule 5 to the 2022 Act, where plans were deposited with a local authority in accordance with section 16 of the 1984 Act before 1st October 2023 then the local authority continues to be the building control authority and the 1984 Act continues to apply in relation to such plans, as if the plans amendments had not been made, until—

- (a) the plans are rejected under any provision of the 1984 Act or regulations made under it (as that provision had effect immediately before 1st October 2023),
- (b) the plans lapse in accordance with section 32 of the 1984 Act (lapse of building control approval), or
- (c) the building work to which the plans relate is completed,

whichever occurs first.

(2) In relation to any case to which Schedule 3 to the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023^(a) applies then paragraph (1) has effect subject to the provisions of Schedule 3 to those Regulations which are applicable in that case.

(3) Notwithstanding the omission of article 45 of the Regulatory Reform (Fire Safety) Order 2005^(b) by paragraph 90 of Schedule 5 to the 2022 Act, the requirement to consult under article 45 continues to apply, as that provision had effect immediately before 1st October 2023, in relation to any plans deposited with a local authority in accordance with section 16 of the 1984 Act before that date.

(4) In this regulation “the plans amendments” means the amendments provided for in section 36 of, and paragraphs 14(8), 15(10), 20, 21(3) and (4), 22(3) to (6), 23(3) and (4), 26(3) and (4), 27(3) to (5), 29, 32(4), (5) and (6)(d), and 79 of Schedule 5 to, the 2022 Act.

Transitional provisions in relation to building control authority for higher-risk building work before 1st October 2023

4.—(1) Subject to paragraph (4), notwithstanding the insertion of section 91ZA into the 1984 Act by section 32 of the 2022 Act, where plans in relation to higher-risk building work were deposited with a local authority in accordance with section 16 of the 1984 Act before 1st October 2023 then—

(a) S.I. 2023/909.

(b) S.I. 2005/1541. Article 45 was omitted by paragraph 90 of Schedule 5 to the 2022 Act.

- (a) section 121A of the 1984 Act has effect in relation to the plans as if the local authority were the building control authority in relation to the building work and not the regulator^(a), and
- (b) the 1984 Act has effect as if the regulator amendments had not been made,

until the plans end date.

(2) Subject to paragraph (4), notwithstanding the amendment of section 47 of the 1984 Act by section 46(1) of the 2022 Act, where an initial notice which relates to higher-risk building work was given to a local authority before 1st October 2023 then the local authority continues to be the building control authority in relation to the notice, as if the section 46(1) of the 2022 Act had not been made, until the notice end date.

(3) Where an amendment notice which relates to higher-risk building work was given to a local authority before 1st October 2023 and the notice has not been rejected, accepted or treated as accepted by that date then, notwithstanding the amendment of section 51A of the 1984 Act^(b) by section 46(2) of the 2022 Act, the local authority continues to be the building control authority in relation to the notice as if section 46(2) of the 2022 Act had not been made, until the notice is rejected, accepted or treated as accepted and where the amendment notice is not rejected paragraph (2) then applies to the initial notice as varied by the amendment notice.

(4) In relation to any case to which Schedule 3 to the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 applies then paragraph (1) or, as the case may be, paragraph (2) has effect subject to the provisions of Schedule 3 to those Regulations which are applicable in that case.

(5) In this regulation—

“amendment notice” has the meaning in section 51A of the 1984 Act;

“higher-risk building work” means any work for which the regulator would have been the building control authority by virtue of section 91ZA of the 1984 Act had that provision been in force at the time when the initial notice was given or the plans deposited;

“notice end date” means the date when—

- (a) the notice is rejected by the local authority in accordance with section 47 of the 1984 Act,
- (b) the notice ceases to be in force in accordance with section 47(4)(b)(ii) of that Act,
- (c) the notice is cancelled in accordance with section 52 or 52A of that Act^(c),
- (d) the notice lapses in accordance with section 53A of that Act^(d), or
- (e) the building work to which the notice relates is completed,

whichever occurs first;

“plans end date” means the date when—

- (a) the plans are rejected under any provision of the 1984 Act or regulations made under it (as that provision had effect immediately before 1st October 2023),
- (b) the plans lapse in accordance with section 32 of the 1984 Act, or
- (c) the building work to which the plans relate is completed,

whichever occurs first;

“the regulator amendments” means the amendments provided for in sections 32(1) to (3) and 37 of, and paragraphs 5(3), 11(4), 14(5), 15(8), 18, 21(2), 22(2), 23(2), 24, 25, 26(2), 27(2), 30(4), 32(2) and (6)(b), 33, 34, 35, 37, 39, 55(2), (4)(b) and (5), 57, 58(3)(b) and (4), 61, 62, 63, 64, 65, 66, 68, 69, 70 and 72(4) of Schedule 5 to, the 2022 Act.

(a) The regulator is defined in section 126 of the 1984 Act, the definition was inserted by paragraph 81 of Schedule 5 to the 2022 Act.

(b) Section 51A was inserted by S.I. 1996/1905.

(c) Section 52A was inserted into the 1984 Act by section 46 of the 2022 Act.

(d) Section 53A was inserted into the 1984 Act by section 36 of the 2022 Act.

Transitional and saving provisions in relation to lapse of building control etc

5.—(1) Subject to paragraph (2), notwithstanding the commencement of section 36 of the 2022 Act (lapse of building control approval etc)—

- (a) section 32 of the 1984 Act continues to apply, as that provision had effect immediately before 1st October 2023, in relation to any plans deposited with a local authority pursuant to section 16 of the 1984 Act before that date;
- (b) section 50(8) of the 1984 Act continues to apply, as that provision had effect immediately before 1st October 2023, in relation to any plans certificate given to a local authority and accepted or treated as accepted under section 50 of the 1984 Act before that date;
- (c) section 52(5) of the 1984 Act continues to apply, as that provision had effect immediately before 1st October 2023, in relation to any initial notice given to a local authority and accepted or treated as accepted under section 47 of the 1984 Act before that date.

(2) The saving provision set out in paragraph (1)(a) ceases on 6th April 2024 in relation to any plans where the work described in the plans was not started before that date and accordingly section 32 of the 1984 Act (lapse of building control approval), as amended by the 2022 Act, applies from that date but subject to the modifications in paragraph (4).

(3) The saving provisions set out in paragraphs (1)(b) and (1)(c) cease on 6th April 2024 in relation to any initial notice or, as the case may be, any plans certificate where the work described in the notice or certificate was not started before that date and accordingly section 53A of the 1984 Act applies from that date.

(4) Where paragraph (2) applies, section 32 of the 1984 Act (lapse of building control approval) has effect in relation to those plans as if—

- (a) subsection (1) provided that the relevant day were the day the plans were deposited;
- (b) the reference in subsection (3) to the application having not been made were a reference to the plans having not been deposited;
- (c) subsection (4) were omitted.

(5) In this regulation “plans certificate” has the meaning in section 50 of the 1984 Act.

Transitional and saving provisions in relation to appeals etc

6.—(1) Notwithstanding the commencement of Schedule 6 to the 2022 Act, section 10(6), 19(4), 21(3), (4) and (6), 22(4), 24(2), 25(2) and (5), 36(3), 39, 40(1), 55(1), 62(2), 68(3), 73(2), 75(2) and (3), 77(1), 78(7), 85(3), 98, 102, 103 of, or paragraph 3(3) of Schedule 2 to, the 1984 Act continue to apply, as those provisions had effect immediately before 1st October 2023, in relation to an appeal or application under any of those provisions which was made before that date.

(2) Notwithstanding the commencement of paragraph 20 of Schedule 5 to the 2022 Act, section 16(10) of the 1984 Act continues to apply, as that provision had effect immediately before 1st October 2023, in relation an application for a reference under that provision which was made before that date.

Transitional and saving provisions in relation to enforcement

7.—(1) Notwithstanding the commencement of section 39(1) and (2) of, and paragraph 31 of Schedule 5 to, the 2022 Act, sections 35 and 35A of the 1984 Act^(a) continue to apply, as those provisions had effect immediately before 1st October 2023, in relation to any information laid before a magistrates’ court before that date.

(2) Notwithstanding the commencement of section 39(3) of, and paragraph 32 of Schedule 5 to, the 2022 Act, section 36 of the 1984 Act continues to apply, as that provision had effect

(a) Section 32A was inserted into the 1984 Act by section 13 of the Climate Change and Sustainable Energy Act 2006 (c. 19) and amended by section 317 of the Housing and Regeneration Act 2008 (c. 17).

immediately before 1st October 2023, in relation to any notice given by a local authority under section 36(1) or (2) of the 1984 Act before that date.

Transitional provisions in relation to approved inspectors

8.—(1) Until 6th April 2024, notwithstanding the amendments in section 46 of the 2022 Act, sections 52A and 55(2A) and (2E) of the 1984 Act have effect as if any reference to a registered building control approver were a reference to an approved inspector.

(2) Until 6th April 2024, notwithstanding the amendments in paragraph 8 of Schedule 6 to the 2022 Act, section 50(2) of the 1984 Act has effect as if any reference to a registered building control approver were a reference to an approved inspector.

(3) Where before 6th April 2024 an approved inspector who gave an initial notice has become a suitably qualified registered building control approver, then with effect from 6th April 2024 any initial notice given by the approved inspector before that date is treated as if it were given instead by that person in their capacity as a registered building control approver.

(4) For the purposes of paragraph (3), a registered building control approver is suitably qualified if the work to which the initial notice relates is within the scope of the registration of the registered building control approver.

(5) Subject to paragraph (6), where an initial notice has been given by an approved inspector before 6th April 2024 and any of the building work described in the initial notice given has not been given a final certificate before 1st October 2024 then, for the purposes of section 47(4)(b)(ii) of the 1984 Act, the initial notice ceases to be in force with effect from 1st October 2024.

(6) Paragraph (5) does not apply to any initial notice which is treated as given by a registered building control approver by virtue of paragraph (3).

(7) In this regulation—

“approved inspector” has the meaning in section 49 of the 1984 Act;

“final certificate” has the meaning in section 51 of the 1984 Act.

Saving provisions for repeal of powers to make regulations

9. Notwithstanding the repeal of paragraphs 2 to 4B of Schedule 1 to the 1984 Act(a) by paragraph 83(3) of Schedule 5 to the 2022 Act, any provisions of the following regulations made under paragraphs 2 to 4B of Schedule 1 to the 1984 Act continue in force and have effect as if made under paragraphs 1A, 1B, 1C, 1D, 1F and 1G of Schedule 1 to the 1984 Act and may be varied or revoked accordingly—

(a) the Building (Local Authority Charges) Regulations 2010(b);

(b) the Building Regulations 2010;

(c) the Building (Approved Inspectors etc.) Regulations 2010(c).

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

Lee Rowley

Parliamentary Under Secretary of State

11th September 2023

Department for Levelling Up, Housing and Communities

(a) Paragraphs 4A and 4B were inserted into Schedule 1 to the 1984 Act by sections 8 and 9 of the Sustainable and Secure Buildings Act 2004 (c. 22).

(b) S.I. 2010/404 as amended by S.I. 2010/2214, 2010/2215 and 2012/3119 and 2023/911.

(c) S.I. 2010/2215 as amended by S.I. 2012/3119, 2013/747, 2013/2730, 2014/110, 2014/579, 2016/285, 2016/611, 2018/558, 2021/1391, 2021/1392, 2022/718, 2022/948 and 2023/906.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the fifth commencement Regulations made under the Building Safety Act 2022 (c. 30) (“the 2022 Act”).

Regulation 2 brings into force on 1st October 2023 a number of provisions of the 2022 Act, including amendments to the Building Act 1984 (c.55) (“the 1984 Act”) which in particular provide for the building safety regulator (see section 2 of the 2022 Act) to be the building control authority for higher-risk buildings in England. This is achieved by commencing in particular sections 32 and 46 of the 2022 Act. Section 46, for example, makes it unlawful for initial notices and amendment notices to include higher-risk building work. The amendments to the 1984 Act also provide for section 16 (deposit of plans) to be repealed and powers have been inserted into that Act to provide for applications for building control approval instead. The 2022 Act also provides for those appeals etc under the 1984 Act to the magistrates’ courts to instead be to the First-tier Tribunal. And the amendments have provided for the determination of disputes under the 1984 Act by the Secretary of State to be made to the regulator. The amendments in section 42 of the 2022 Act (building control profession) have been commenced so far as to enable the regulator to register building inspectors and building control approvers.

Regulations 3 to 9 set out transitional and saving provisions, in particular in relation to plans deposited, initial notices given or appeals made before 1st October 2023.

There are three impact assessments for implementing the changes to the building safety regime, they were published alongside the explanatory memorandum for S.I. 2023/906, 2023/907 and 2023/911 at www.legislation.gov.uk.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Building Safety Act 2022 have been brought into force by commencement regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 2(2)	28th June 2022	S.I. 2022/561
Section 3	28th June 2022	S.I. 2022/561
Section 4 (partially)	1st December 2022	S.I. 2022/1210
Section 5	1st April 2023	S.I. 2023/362
Section 6	1st April 2023	S.I. 2023/362
Section 8	1st April 2023	S.I. 2023/362
Section 9 (partially)	1st December 2022	S.I. 2022/1210
Section 9 (remaining purposes)	1st April 2023	S.I. 2023/362
Section 11	1st December 2022	S.I. 2022/1210
Sections 12 to 16	6th April 2023	S.I. 2023/362
Section 17	28th June 2022	S.I. 2022/561
Section 18	28th June 2022	S.I. 2022/561
Section 20	6th April 2023	S.I. 2023/362
Sections 22 to 25	6th April 2023	S.I. 2023/362
Section 27	6th April 2023	S.I. 2023/362
Section 29	6th April 2023	S.I. 2023/362
Section 31	28th June 2022	S.I. 2022/561
Section 32 (partially)	6th April 2023	S.I. 2023/362
Sections 33 to 35	6th April 2023	S.I. 2023/362
Section 36 (partially)	6th April 2023	S.I. 2023/362
Section 37	6th April 2023	S.I. 2023/362

Section 38 (partially)	6th April 2023	S.I. 2023/362
Section 39 (partially)	6th April 2023	S.I. 2023/362
Section 41	28th June 2022	S.I. 2022/561
Section 42 (partially)	6th April 2023	S.I. 2023/362
Section 44 (partially)	6th April 2023	S.I. 2023/362
Section 46 (partially)	6th April 2023	S.I. 2023/362
Section 47	1st April 2023	S.I. 2023/362
Section 48	28th July 2022	S.I. 2022/561
Sections 49 to 53 (partially)	6th April 2023	S.I. 2023/362
Section 55 (partially)	28th June 2022	S.I. 2022/561
Section 55 (partially)	1st April 2023	S.I. 2023/362
Section 55 (partially)	6th April 2023	S.I. 2023/362
Section 56 (partially)	6th April 2023	S.I. 2023/362
Section 57	28th June 2022	S.I. 2022/561
Sections 71 to 75	6th April 2023	S.I. 2023/362
Section 78 (partially)	6th April 2023	S.I. 2023/362
Section 89	6th April 2023	S.I. 2023/362
Sections 107 to 110	6th April 2023	S.I. 2023/362
Section 112 (partially)	6th April 2023	S.I. 2023/362
Section 114	6th April 2023	S.I. 2023/362
Sections 126 to 129	1st September 2022	S.I. 2022/927
Sections 130 and 131	28th June 2022	S.I. 2022/561
Section 132 (partially)	28th May 2022	S.I. 2022/561
Section 132 (remaining purposes)	28th June 2022	S.I. 2022/561
Section 133 (partially)	1st April 2023	S.I. 2023/362
Sections 144 and 145	6th April 2023	S.I. 2023/362
Section 156	1st October 2023	S.I. 2023/362
Section 160	1st October 2022	S.I. 2022/561
Schedule 1	28th June 2022	S.I. 2022/561
Schedule 2	6th April 2023	S.I. 2023/362
Schedule 3	6th April 2023	S.I. 2023/362
Schedule 5, paragraphs 1 (partially), 2, 3, 4 (partially), 5 (partially), 6, 9, 10, 11 to 15 (partially), 16, 22 (partially), 46 (partially), 50, 51, 53, 55 (partially), 57 (partially), 67, 71, 74 (partially), 75, 76 (partially), 77 (partially), 78, 81 (partially), 82, 83 (partially) and 84 (partially).	28th June 2022	S.I. 2022/561
Schedule 5, paragraphs 17, 77 (remaining purposes), 85, 87 and 88	1st April 2023	S.I. 2023/362
Schedule 5, paragraphs 40(3), 42(3), 80 (partially) and 83(8)	6th April 2023	S.I. 2023/362
Schedule 6, paragraph 30 (partially)	6th April 2023	S.I. 2023/362

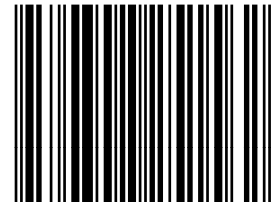
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