

[2022] No. [xx]

BUILDING AND BUILDINGS, ENGLAND

The Building (Restricted Activities and Functions) (England) Regulations [2022]

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State has consulted the regulator and such other persons as the Secretary of State considers appropriate in accordance with section 120B(3) of the Building Act 1984(a).

The Secretary of State, in exercise of the powers conferred by sections 1, 46A and 54B of, and paragraph 10 of Schedule 1 to, the Building Act 1984, makes the following Regulations.

Citation, extent, application and commencement

1.—(1) These Regulations may be cited as the Building (Restricted Activities and Functions) (England) Regulations [2022].

(2) These Regulations extend to England and Wales.

(3) These Regulations do not apply to any building or building work in Wales.

(4) These Regulations come into force on [date].

Interpretation

2. In these Regulations—

“the Act” means the Building Act 1984;

“building control approval application” means an application made to a local authority under regulation [??] of the Building (Procedures) Regulations [2022];

“HRB building control approval application” means an application made to the regulator(b) under regulations [7] of the Building (Higher-Risk Buildings) Regulations [2022] (building control approval applications);

“HRB change control application” means an application under regulation [14] of the Building (Higher-Risk Buildings) Regulations [2022] (change control applications) in relation to a matter described in regulation [11(1)(a)] of those Regulations (change control);

(a) 1984 c.55. Section [120B] was inserted by paragraph [77] of Schedule [5] to the Building Safety [Act 2022 (c.??)]. Sections [46A and 54B] were inserted by sections [43] of the Building Safety [Act 2022].

(b) The Health and Safety Executive is the regulator. See section 126 of the Building Act 1984 as amended by paragraph [81] of Schedule 5 to the Building Safety [Act 2022].

“HRB completion certificate application” means an application for a completion certificate made to the regulator under regulation [31] of the Building (Higher-Risk Buildings) Regulations [2022] (completion certificate applications);

“HRB partial completion certificate application” means an application for a partial completion certificate made to the regulator under regulation [36] of the Building (Higher-Risk Buildings) Regulations [2022] (partial completion certificates);

“staged application” means a building control approval application, or a HRB building control approval application, that is granted subject to a requirement that work does not progress beyond a specified stage or point without agreement of the building control authority(a).

Restricted activities and functions: local authorities

3.—(1) For the purposes of section 46A(1) of the Act, in relation to local authorities, each of the following activities is prescribed as a restricted activity—

- (a) where plans(b) are submitted to a local authority under any provision of the Building Regulations 2010(c), checking of those plans for compliance with any applicable requirement of the building regulations;
- (b) where an inspection of building work is to be carried out by a local authority for the purpose of checking compliance with any applicable requirement of the building regulations, the carrying out of that inspection (including scheduling the stages or points for inspections).

(2) For the purposes of section 46A(2) of the Act, in relation to local authorities, each of the following functions is prescribed as a restricted function—

- (a) determining an application for a direction under section 8 of the Act (relaxation of building regulations);
- (b) determining a building control approval application (including exercising, in relation to such an application, a power in—
 - (i) section 19(1) of the Act (use of short-lived materials),
 - (ii) section 20(1) of the Act (use of materials unsuitable for permanent building),
 - (iii) section 21(4) of the Act (provision of drainage), or
 - (iv) section 25(1) of the Act (provision of water supply));
- (c) fixing a period on the expiration of which a building or work must be removed or extending such a period, or imposing conditions in relation to a building or vary such conditions, under—
 - (i) section 19(2) or (3) of the Act (use of short-lived materials), or
 - (ii) section 20(2), (3) or (4) of the Act (use of materials unsuitable for permanent building);
- (d) requiring a building to be drained in combination under section 22 of the Act (drainage of buildings in combination);
- (e) giving consent under section 23 of the Act (provision of facilities for refuse);
- (f) giving a notice or granting a certificate under section 25(3) of the Act (provision of water supply);
- (g) giving a certificate under regulation 17 or 17A of the Building Regulations 2010 (completion certificates and partial completion certificates);
- (h) determining an application for a certificate under regulation 18 of the Building Regulations 2010 (unauthorised building work);

(a) See the definition of building control authority in section 121A of the Building Act 1984 which was inserted by section [31] of the Building Safety [Act 2022].

(b) See the definition of plans in section 126 of the Building Act 1984.

(c) S.I. 2010/2214.

- (i) deciding, where regulation 19(1) of the Building (Approved Inspectors etc.) Regulations 2010(a) (partly completed work) applies, that—
 - (i) plans given under that regulation are sufficient, or show that the intended work will not contravene any applicable requirement of the building regulations, or
 - (ii) any building work must be cut into, laid open or pulled down in order to ascertain whether any work in relation to which there is no final certificate(b) contravenes an applicable requirement of the building regulations;
- (j) exercising any power under section 33 of the Act (tests for conformity with building regulations);
- (k) deciding, for the purposes of section 35 of the Act (offence of contravening building regulations etc), whether there is a contravention of a provision of the building regulations or a requirement imposed by virtue of any such provision;
- (l) giving a compliance notice under section 35B of the Act (compliance notices);
- (m) giving a stop notice under section 35C of the Act (stop notices);
- (n) giving or withdrawing a section 36 notice(c) or deciding to pull down or remove work or effect alterations in it as deemed necessary under section 36(3) of the Act;
- (o) determining whether to accept or reject a transfer certificate and transfer report in accordance with section 53C of the Act (consideration of transfer certificate and report).

Restricted functions: regulator

4. For the purposes of section 46A(2) of the Act, in relation to the regulator, each of the following functions is prescribed as a restricted function—

- (a) determining an application for a direction under section 8 of the Act (relaxation of building regulations);
- (b) determining an HRB building control approval application (including exercising, in relation to such an application, a power in—
 - (i) section 19(1) of the Act (use of short-lived materials),
 - (ii) section 20(1) of the Act (use of materials unsuitable for permanent building),
 - (iii) section 21(4) of the Act (provision of drainage), or
 - (iv) section 25(1) of the Act (provision of water supply));
- (c) giving approval, in relation to a staged application, so work may proceed beyond a stage or point;
- (d) fixing a period on the expiration of which a building or work must be removed or extending such a period, or imposing conditions in relation to a building or vary such conditions, under—
 - (i) section 19(2) or (3) of the Act (use of short-lived materials), or
 - (ii) section 20(2), (3) or (4) of the Act (use of materials unsuitable for permanent building);
- (e) requiring a building to be drained in combination under section 22 of the Act (drainage of buildings in combination);
- (f) giving consent under section 23 of the Act (provision of facilities for refuse);
- (g) giving a notice or granting certificate under section 25(3) of the Act (provision of water supply);
- (h) determining an HRB change control application;

(a) S.I. 2010/2215.

(b) See the definition of final certificate in section 51 of the Building Act 1984.

(c) See the definition in section 36(4) of the Building Act 1984.

- (i) determining an HRB completion certificate application;
- (j) determining an HRB partial completion certificate application;
- (k) exercising any power under section 33 of the Act (tests for conformity with building regulations);
- (l) deciding, for the purposes of section 35 of the Act (offence of contravening building regulations etc), whether there is a contravention of a provision of the building regulations or a requirement imposed by virtue of any such provision;
- (m) giving a compliance notice under section 35B of the Act (compliance notices);
- (n) giving a stop notice under section 35C of the Act (stop notices);
- (o) giving or withdrawing a section 36 notice^(a) or deciding to pull down or remove work or effect alterations in it as deemed necessary under section 36(3) of the Act.

Restricted activities and functions: registered building control approvers

5.—(1) For the purposes of section 54B(2) of the Act each of the following activities is prescribed as a restricted activity—

- (a) where a plans certificate^(b) or final certificate^(c) is to be given under the Building (Approved Inspectors etc.) Regulations 2010^(d), checking of plans^(e) to which the certificate relates for compliance with any applicable requirement of the building regulations;
- (b) where an inspection of building work is to be carried out by the registered building control approver for the purpose of checking compliance with any applicable requirement of the building regulations, the carrying out of that inspection (including scheduling the stages or points for inspections).

(2) For the purposes of section 54B(3) of the Act each of the following functions is prescribed as a restricted function—

- (a) giving an initial notice^(f) to a local authority under section 47 of the Act (initial notices) including an initial notice combined with a plans certificate or a new initial notice under section 53(7) of the Act (new initial notices);
- (b) giving a plans certificate to a local authority under section 50 of the Act (plans certificates);
- (c) giving a final certificate to a local authority under section 51 of the Act (final certificates);
- (d) giving an amendment notice^(g) to a local authority under section 51A of the Act (variation of work to which initial notice relates);
- (e) giving a notice to a local authority under section 52(1)(c) of the Act (cancellation of initial notice for contravention of any provision of the building regulations);
- (f) giving a transfer certificate and transfer report under section 53B of the Act (new initial notice: change of registered building control approver).

Signed by authority of the Secretary of State for Housing, Communities and Local Government

[Name]

Parliamentary Under Secretary of State

Ministry of Housing, Communities and Local Government

[Date]

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- (a) See the definition in section 36(4) of the Building Act 1984.
 - (b) See the definition of plans certificate in section 50 of the Building Act 1984.
 - (c) See the definition of final certificate in section 51 of the Building Act 1984.
 - (d) S.I. 2010/2215.
 - (e) See the definition of plans in section 126 of the Building Act 1984.
 - (f) See the definition of initial notice in section 47 of the Building Act 1984.
 - (g) See the definition of amendment notice in section 51A of the Building Act 1984.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that certain functions of local authorities, the regulator (the Health and Safety Executive) and registered building control approvers may only be exercised after receiving advice from a registered building inspector whose registration covers the type of building and building work to which the function relates. It also provides that certain activities of local authorities and registered building control approvers must be exercised by using a registered building inspector whose registration covers the type of building and building work to which the activity relates.

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