



Department for Levelling Up,
Housing & Communities

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*Deputy Director, Reform Policy, Legislation
and Sponsorship*

To: (England only)

Local Government Chief Executives and Heads of
Building Control

Approved Inspectors

The Chief Fire Officer

Fire and Rescue Authorities

Dear Sir, Madam,

**Department for Levelling Up,
Housing and Communities**
Fry Building
2 Marsham Street
London SW1P 4DF

www.gov.uk/dluhc

1 February 2024

Changes to the building control process for higher-risk buildings and wider changes to procedural building regulations applying to buildings in England.

You will be aware that the Department recently published the following regulations under Part 3 of the Building Safety Act 2022:

- The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023
- The Building Regulations etc. (Amendment) (England) Regulations 2023
- The Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023
- The Building Safety Act 2022 (Consequential Amendments etc.) Regulations 2023
- The Building Act 1984 (Commencement No. 3) (England) Order 2023
- The Building Safety Act 2022 (Commencement No. 5 and Transitional Provisions) Regulations 2023

I am writing to provide further detail on the changes made to the building control process for higher-risk buildings and the wider changes to procedural building regulations that now apply (as of 1 October 2023) in England.

These regulations deliver the recommendations set out by Dame Judith Hackitt in her [Building a Safer Future](#) report and cover the technical detail underpinning the new, more stringent regime for the design and construction of higher-risk buildings and building work carried out in these buildings, wider changes to the building regulations for all buildings and the creation of a regulated building control profession. The regulations can be found here: <https://www.gov.uk/guidance/the-building-safety-act-secondary-legislation>

The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 introduce a new building control process for building work creating, or in, higher-risk buildings, which is to be overseen by the Building Safety Regulator (“the Regulator”). The new building control process will apply to multi-occupied residential buildings, hospitals and care homes that are at least 18 metres in height or have at least 7 storeys. The Building Safety Act 2022 and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, set out the use criteria and how height and number of storeys are determined for the purpose of defining whether these regulations apply.

The Building Regulations etc. (Amendment) (England) Regulations 2023 make changes to building regulations that will apply to all building work, to raise standards across the built environment. Legal responsibilities will be placed on those who commission building work, participate in the design and construction process and carry out the building control function, to make sure building work is compliant with building regulations.

The Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023, make amendments to the Building (Approved Inspectors etc.) Regulations 2010 to begin to implement the changes introduced by the Building Safety Act 2022 and support the new building control regime. This will introduce changes to improve accountability and competence, such as establishing a regulated building control profession. This includes setting out the length of time of registration for registered building control approvers and registered building inspectors.

Together these regulations will fundamentally reform the way buildings are designed and constructed, and how building work is carried out, delivering lasting building safety reform for generations to come.

Building control process for higher-risk buildings

Oversight of higher-risk buildings

The new building control process for higher-risk buildings in England came into force on 1 October 2023. From this date the building control authority for higher-risk buildings is the Building Safety Regulator. Any new building work in-scope of the higher-risk regime can no longer be overseen by local authority or private sector building control.

The Regulator will be the building control authority for higher-risk buildings, in particular:

- the construction of a new higher-risk building;
- building work to an existing higher-risk building;
- any work that causes a non-higher-risk building to become a higher-risk building, including material change of use; and
- any work relating to a higher-risk building that causes it to cease to be such a building.

Should you be sent a full plans application or asked to provide building control for a higher-risk building after 1 October you must inform the applicant that they must send a building control approval application to the Regulator following the process outlined in the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023.

As outlined above, the definition of higher-risk building for the design and construction part of the higher-risk regime is provided by section 120D of the Building Act 1984 and the Higher-Risk Building (Descriptions and Supplementary Provisions) Regulations 2023.

Guidance is being produced to support you in understanding the definition of higher-risk building. This guidance should be used instead of any other guidance covering buildings, height measurements and/or storey measurements. This will ensure the definition of higher-risk building set out in law is being followed. The guidance on the definition of higher-risk building can be found here: <https://www.gov.uk/government/collections/guidance-on-the-criteria-for-being-a-higher-risk-building>.

Transitional arrangements for higher-risk buildings

The Building (Higher-Risk Building Procedures) (England) Regulations 2023 sets out the transitional arrangements that determine the rules and procedures that building work in-scope

of the higher-risk regime will need to follow if they have already notified a building control body of their plans. For transitional arrangements to apply to higher-risk building work on 1 October 2023 an initial notice must have been given to a local authority (and not be rejected) or full plans must have been deposited with a local authority before that date.

To continue to benefit from the transitional arrangements on and after 6 April 2024, the in-scope building work must satisfy the definition of “sufficiently progressed” before that date. In addition, the person carrying out the work must notify the local authority no more than 5 days after the point the work is sufficiently progressed and before 6 April 2024. The definition of “sufficiently progressed” is set out later in this letter.

It is important that the relevant building control bodies are aware that the conditions of the transitional provisions have been met. To ensure this, if the building control body is private sector building control, the notice (that the work is sufficiently progressed) must be sent to the local authority and copied to the approved inspector or registered building control approver.

For the construction of a higher-risk building, the building work is sufficiently progressed when the placement of permanent foundations has started. This means the pouring of concrete for the permanent placement of the trench, pad or raft foundations or the permanent placement of piling has begun. For building work to an existing higher-risk building or a material change of use, the building work is sufficiently progressed when the work has started as defined later in this letter.

Local authorities and approved inspectors (or registered building control approvers) should encourage dutyholders of relevant projects to send in this notice, even where the project they are overseeing has sufficiently progressed before 1 October 2023. It is important that the transitional provisions are not abused, so if there is clear evidence that a notice that work has “sufficiently progressed” has been erroneously issued because the proposed work has not “sufficiently progressed”, the building control body is encouraged to challenge the validity of the notice with the person carrying out the work. If a valid notice that work is ‘sufficiently progressed’ is not provided before 6 April 2024, then under the transitional provisions the work would transfer to the jurisdiction of the Regulator from that date.

If the conditions of the transitional provisions are met, those carrying out the work would not be subject to the higher-risk regime for that individual higher-risk building work. They would instead continue under a local authority or private sector building control. If full plans deposited with a local authority are rejected on or after 1 October, the work falls under the jurisdiction of the Regulator and the new regulations will be applied, including any uplifts to functional requirements. Unlike the current regime, starting the work without building control approval from the Regulator will be a breach of the regulations against which the Regulator could take enforcement action.

Where the first condition has been met (full plans have been deposited or a notice has been given and not rejected), but the second condition has not (work has not sufficiently progressed), the building work will transfer to the jurisdiction of the Regulator. The route of transfer and the higher-risk regime requirements to be applied will differ dependent on whether the building work was previously overseen by a local authority or private sector building control.

In addition, where the transitional provisions apply to higher-risk building work, should the building control approval for the building work lapse under section 32 or section 52 of the Building Act 1984 (as those provisions had effect immediately before 1 October 2023) because work has not commenced within three years of plans being deposited or an initial notice being issued, the building work will also transfer to the Regulator.

The transitional provisions in the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 do not apply to scheme work or exempt work. The Building Regulations etc. (Amendment) (England) Regulations 2023 set out that for all new building work that takes place in a higher-risk building carried out under a competent person scheme, or a third-party certification scheme, notices related to the work must be sent to the Regulator and not the local authority. Existing scheme work that has already started on 1 October should continue to follow the current requirements.

Reversions and regularisation

Consideration must be given if in-scope higher-risk building work has reverted to the Local Authority. It is likely that this work, if a certificate has not been given for the work, would transfer to the Regulator from 1 October 2023 onwards. We expect these to be exceptional cases. In cases where the local authority has already made investigations about the building work and whether it is compliant, we would expect the local authority to work with the Regulator and provide an assessment to the Regulator regarding the compliance of the work. In cases where the local authority has yet to make an investigation about the compliance of the in-scope building work that has reverted, this work would transfer to the Regulator and an application for work would need to be submitted to the Regulator.

Higher-risk building work overseen by a local authority on 1 October 2023

Where in-scope building work overseen by the local authority on 1 October 2023 has not sufficiently progressed by 6 April 2024, it will transfer to the Regulator on that date. To ensure the Regulator has notice of building work that may transfer to its jurisdiction, the local authority is required to notify the Regulator by 6 March 2024 about any in-scope higher-risk building work they are overseeing where they have not received a notice confirming the work is sufficiently progressed. Local authorities should do this no later than 6 March 2024, but earlier than this date is encouraged where they are aware that the project they are overseeing will not sufficiently progress by 6 April 2024.

Where a notice is given after 6 March 2024 but before 6 April 2024, the Department expects local authorities to update the Regulator as soon as possible. The notice provided by the local authority must include details of the building, a description of the building work and an outline of the work undertaken, including any inspections.

The local authority, the person carrying out the work and the Regulator should engage with each other during the 28-day period to facilitate transition. If the project is subsequently sufficiently progressed by 6 April 2024, the project will remain with the local authority.

When the 6-month period ends on 6 April 2024, if the in-scope building work has still not sufficiently progressed it will transfer to the jurisdiction of the Regulator on this date and the new regulations for higher-risk buildings will be applied. Within four weeks of transferring to the jurisdiction of the Regulator, the client of the in-scope building work is required to send across a notice to the Regulator which includes all relevant information on the higher-risk building work. Any conditions imposed by a local authority when providing building control approval will remain in place and will be overseen by the Regulator.

Higher-risk building work overseen by an approved inspector on 1 October 2023

Under the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023, the building control profession will become a registered profession on 6 April 2024. In addition to the aforementioned conditions, an approved inspector overseeing existing in-scope

building work must have registered by 6 April 2024 for the in-scope building work to continue to benefit from the transitional arrangements and remain under private sector building control.

Where in-scope building work has not sufficiently progressed, or the approved inspector has failed to register as a registered building control approver by 6 April 2024, the transitional arrangements mean that the initial notice for the work will cease to have effect on that date. The initial notice may also be cancelled for other reasons under the current regulations after 1 October 2023. Where an initial notice ceases after 1 October, all in-scope building work covered by the notice will be subject to the higher-risk regime and must be overseen by the Regulator.

Once an initial notice ceases to be in force after 1 October 2023 the approved inspector or registered building control approver (if registered) must notify the person carrying out the work within five working days that the building work is now under the jurisdiction of the Regulator. Building work must stop when the initial notice ceases to be in force. Any building work that continues after the date the initial notice ceases to be in force is unauthorised work that may be subject to enforcement action from the Regulator.

Within ten working days of an initial notice ceasing to be in force, the person carrying out the work must notify the Regulator that their building work is higher-risk building work. The notification must include contact information of the person carrying out the work; the location of the building; the details of the work to be carried out; and a description of any work already carried out under an initial notice. Dialogue between the Regulator and the person carrying out the proposed work is encouraged at this point.

Before any work can continue on site, the person carrying out the in-scope building work must submit an application for building control approval. This application must meet all the relevant requirements of building control approval applications under the higher-risk regime as well as provide sufficient plans of the work carried out on site to support the Regulator's assessment of whether any part of the work contravenes any applicable building regulations. Where work has sufficiently progressed, the building control approval application does not need to include the prescribed documents outlined in Regulation 4(2)(b) and 12(2)(c) of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023.

On receipt of the application, the Regulator will validate the application as soon as reasonably practicable where it satisfies the information requirements. If the application is valid, the building work may continue. The Regulator will then assess the valid application and any work already completed on site alongside work continuing on the project. If work has not sufficiently progressed, any plans certificates or final certificates issued to parts of the building work will have no effect. If work has sufficiently progressed, work covered by a final certificate will be protected against enforcement from the Regulator, during the construction phase, but any plans certificate will have no effect.

Where an initial notice ceases to have effect, the building work will also be subject to any uplifts to the functional requirements that took place between the initial notice being given to the local authority and the initial notice lapsing. However, the Regulator will be able to dispense with or relax functional requirements where they deem it appropriate to do so.

Further information can be found in the transitional provisions factsheet in Annex B of the government response to the consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings.¹

¹ <https://www.gov.uk/government/consultations/consultation-on-implementing-the-new-building-control-regime-for-higher-risk-buildings-and-wider-changes-to-the-building-regulations-for-all-buildings/consultation-on-implementing->

Regulator's notices

The Building Regulations etc. (Amendment) (England) Regulations 2023 enable a regulator's notice to be used where building work to be carried out comprises both higher-risk building work and non-higher-risk building work, and the developer would prefer for the Regulator to oversee the entire project.

If both the developer and Regulator are in agreement, they will issue a joint notice to the relevant local authority. This notice must include:

- Name, address, telephone number and (if available) email address of the client.
- A statement that the notice is a regulator's notice.
- The location of the proposed building work.
- A description of the proposed building work to which the regulator's notice is to apply, including a statement explaining how that work is connected to higher-risk building work and the location on the site of the higher-risk building work.
- A statement giving the date it is proposed the building work will start and complete.
- A plan showing details of the site.
- A declaration, signed by the client and an authorised employee of the Regulator confirming that the client and Regulator have given consent to the giving of the notice and the proposed building work fulfils the relevant criteria to be covered by a regulator's notice.

Where the Regulator is acting as the building control authority for non-higher-risk building work, it will operate with the same building control functions as the local authority. On completion of the non-higher-risk building work, the Regulator will issue a completion certificate as provided for under Building Regulations 2010.

A local authority is able to reject a regulator's notice, but only on the following grounds:

- The notice does not contain the relevant information or is not in the correct form.
- The notice has been issued to the wrong local authority.
- A building control application (or initial notice) has already been made to a local authority in respect of the work.
- The proposed project does not have the required 'connection' to higher-risk building work i.e., it must be carried out by the same principal contractor on behalf of the same client on the same site as the higher-risk building work.

A notice of rejection from the local authority must be issued within five working days beginning on the day in which the notice is given, otherwise the regulator's notice is deemed accepted. A notice of rejection may be appealed by the client. This appeal is to be made to the First-tier Tribunal.

Conveyancing searches

Where the Regulator is the building control authority for building work, the relevant building control information will be held by the Regulator and not the local authority. As set-out in the regulations, the Regulator and local authority must co-operate with each other in relation to the functions of local authorities under the Local Land Charges Act 1975 where the Regulator is the building control authority for the building work. This will ensure there is a legal duty on the Regulator to share information it holds on building control work to assist local authorities in

discharging their function of maintaining their local land charges, including carrying out conveyancing searches for the buying and selling of property.

Wider changes to buildings regulations

Dutyholder duties and competence

The Building Regulations etc. (Amendment) (England) Regulations 2023 set out a framework which identifies those dutyholders involved in the procurement, design and undertaking of building work, and imposes duties on them. They apply to all building work from 1 October 2023 onwards. The dutyholders to which these regulations will apply will be clients, principal designers, designers, principal contractors and contractors. As has always been the case, the duty to ensure that the work complies with all relevant building regulations is on those procuring and undertaking the design and building work. Dutyholders will need to plan, manage and monitor their work, cooperate and communicate with each other and coordinate their work.

Those undertaking design work and building work will need to have the right competence (the skills, knowledge, experience and behaviours or organisational capability) for the work they are engaged to do. The person making the appointment for design work or commissioning building work has a duty to appoint a competent person, and the person undertaking the work should not undertake the work if they are not competent to do so.

Anyone undertaking design work or building work will need to plan, manage and monitor the work to ensure that it complies with all relevant requirements. When carrying out design work the designer or principal designer will be required to take all reasonable steps to ensure that the design is such that, if the building work to which the design relates has been built in accordance with that design then the building work would comply with all relevant requirements. When carrying out building work, the contractor or principal contractor will need to ensure the building work they carry out complies with all relevant requirements.

The requirements placed upon clients, designers, principal designers, contractors and principal contractors are listed in regulations 11A to 11O of the Building Regulations 2010 as inserted by Regulation 6 of the Building Regulations etc. (Amendment) (England) Regulations 2023.

In higher-risk buildings the dutyholders will need to demonstrate to the Regulator how they intend to comply, how they are complying, and how they have complied with their duties, including submitting a competence declaration to the Regulator when requesting a competition certificate for the work.

Other than the checks being carried out for higher-risk building work when applications are made to the Regulator, we are not expecting proactive inspections of the dutyholder and competence regime. However, when there is a failure to comply with building regulations, the dutyholder and competence regulations will enable the building control authority to track back through the design and building processes for the project for each of the relevant dutyholders and take appropriate action for non-compliance with the building regulations as appropriate.

Changes to depositing full plans

The Building Safety Act 2022 (Commencement No.5 and Transitional Provisions) Regulations 2023 commence the repeal of section 16 (deposit of plans) of the Building Act 1984 on 1 October 2023. From 1 October 2023, clients that intend to carry out non-higher-risk building work that opt for a local authority as its building control body and where the work would previously have required full plans, must submit a building control approval application with full plans to the local authority.

The application must include, and be accompanied by, the information listed in regulation 14(1) and 14(2) of the Building Regulations 2010 as amended by regulation 8 of the Building Regulations etc. (Amendment) (England) Regulations 2023 (annexed to this letter). This includes a statement setting out the date when it is proposed the work will reach the point when it is to be regarded as commenced for the purposes of section 46A of the Building Act 1984 in relation to lapse of plans. Where the work does not consist of the construction of a new building or the horizontal extension of a building, the application must detail the work which the client considers would amount to 15% of the proposed work.

In line with existing practice, local authorities should determine the building control approval application within five weeks, unless an extension is agreed between the local authority and the applicant and set out in writing. A local authority must grant an application for building control approval with full plans unless:

- it does not comply with the information requirements set out in regulation 14;
- is not sufficiently detailed to determine compliance with the building regulations;
- shows the proposed work would contravene any applicable requirement of building regulations; or,
- where relevant, the local authority disagrees with work set-out by the applicant on what constitutes 15% of the proposed work for the purposes of satisfying commencement under section 36 of the Building Safety Act 2022 for the purposes of lapsing a plan.

Under regulation 8 of the Building Regulations etc. (Amendment) (England) Regulations 2023 the local authority can grant an application with requirements. The local authority may specify modifications that must be made in the full plans or that further plans are required. Requirements will replace 'conditions' that, currently, can be imposed when passing or rejecting plans under section 16 of Building Act 1984.

An applicant can appeal to the Regulator against a local authority's rejection of an application for building control approval provided the appeal is made within 21 days of the local authority notifying the applicant of their decision. Should the appeal be rejected, the applicant can appeal against this rejection to the First-tier Tribunal provided the appeal is made within 21 days of the Regulator notifying the applicant of their decision.

Commencement of work: new definition

From 1 October 2023, the Building Safety Act 2022 (Commencement No.5 and Transitional Provisions) Regulations 2023 commenced amendments to the Building Act 1984. These amendments mean that building control approval on new building work lapses automatically after three years in respect of any work which has not commenced. This applies for work overseen by a local authority, private sector building control or the Regulator.

The Building Regulations etc. (Amendment) (England) Regulations 2023 introduce a new definition of 'commencement' of building work for existing and new buildings. This definition of commencement of work must be satisfied within three years of the application for building control approval being submitted to the building control authority. The definition replaces the previously recognised guidance outlined in building circular letters on what does and does not constitute commencement for the purpose of lapsing. It will be incumbent upon building control bodies to monitor and scrutinise whether the definition of commencement has been satisfied.

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. A complex building is

prescribed in the regulations 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 that of a public building with capacity for 100 or more visitors². We expect the person making the building control application to demonstrate to the building control body their methodology for calculating capacity when submitting their application.

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. As outlined above, dutyholders must set out in their application for the building control body to assess, what they consider constitutes 15%.

The new requirements with regards to lapse of building control for higher-risk building work apply even to plans or initial notices submitted and agreed before 1 October 2023 **if** building work has not started on site by 6 April 2024. If building work has not started by that date the new requirements relating to lapse of plans under section 36 of the Building Safety Act 2022 apply. The new definition of commencement of work also applies in relation to plans or initial notices submitted and agreed before 1 October 2023 if the building work has not started by 6 April 2024.

Notifying when work starts on site and when work is commenced

Under the current building control process a notification is only required when work is commenced, in line with the approach to commencement identified in guidance. In recognition of the more stringent definition of commencement in the new regime, dutyholders are required to notify the relevant building control body twice.

A notification must be submitted to the relevant building control body at least two working days before dutyholders intend to start work. This time limit applies for non-higher-risk buildings but is extended to five working days for higher-risk buildings. A further notification must be submitted no more than five working days after the work has satisfied the new definition of the commencement of work. Should the building control authority not be satisfied the work is regarded as commenced, it can issue a rejection notice within four weeks of the date the commencement notice is given. The rejection notice must include the reason for rejection.

The regulations do not prescribe what constitutes starting work, but we expect starting work to consist of the undertaking of any element of permanent notifiable building work as described in the applicant's application or initial notice.

Statutory consultations

The Building Safety Act 2022 (Commencement No.5 and Transitional Provisions) Regulations 2023 commence the revocation of article 45 (consultation with fire and rescue authorities) of the Regulatory Reform (Fire Safety) Order 2005 on 1 October 2023. This requirement has been moved into the Building Regulations 2010; the substance of the requirement remains the same.

² 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.

Regulation 9 of Building Regulations etc. (Amendment) (England) Regulations 2023 requires that where an application for building control approval is given to the local authority and the building work proposed is to erect, extend, make any structural alteration to or change the use of a building to which the Regulatory Reform (Fire Safety) Order 2005 applies or will apply after the work is completed, the local authority must consult the relevant enforcing authority as defined under article 25 of the Regulatory Reform (Fire Safety) Order 2005. This aligns with the current duty to consult under article 45 of the Regulatory Reform (Fire Safety) Order 2005.

In line with the published Building Control Operational Standards Rules, building control bodies must inform statutory consultees in writing of your decision to accept or decline their recommendations alongside your reasons for this decision.

Fire safety information

The Building Regulations etc. (Amendment) (England) Regulations 2023 and the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023 strengthen the fire safety information handover for buildings where the Fire Safety Order applies, to make the process safer and more efficient.

The person carrying out the work is required to share fire safety information with the Responsible Person on the date of completion or occupation, whichever is the earlier. The Responsible Person must give notice to the person carrying out the work that they have received the fire safety information. Where work is overseen by the local authority, the person carrying out the work must also give notice to the local authority to confirm the handover of fire safety information has taken place. The notice to the local authority must be given within five days of completion or occupation, whichever comes earlier. Where work is overseen by private sector building control, the approved inspector or registered building control approver must provide confirmation in the final certificate that the fire safety information has been given to the responsible person.

For work carried out under a competent person scheme or third-party certification scheme, the person carrying out the work must notify the installer or third-party certifier within seven days of the date the work is completed to confirm they have given the fire safety information to the responsible person and received confirmation from the responsible person. The third-party certifier must notify the local authority to confirm the handover of fire safety information has taken place within 30 days of the work being completed.

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. This includes information about the realistic assumptions made during the design and construction phase about the management and servicing of products and systems or the resource expected to maintain them during occupation.

Building control authority powers to require reasonable tests

Regulations 45 and 46 of the Building Regulations 2010 were revoked on 1 October 2023 and replaced by the commencement of section 33 of the Building Act 1984. The commencement of section 33 provides building control authorities with powers to require a person to carry out reasonable tests, for the purposes of ascertaining whether building work complies with building regulations. The cost of tests undertaken must be met by the person, unless the building control

authority issues a direction that the building control authority will meet the expense, or part of the expense of carrying out the required tests.

Section 33 also provides that the person required to carry out tests has a route of appeal to the First-tier Tribunal against a building control authority's requirement to undertake tests or a refusal by the building control authority to issue a direction on costs. A court may order the expense to which the application relates to be met by the local authority.

These powers are broader than those previously provided by regulations 45 and 46 of the Building Regulations 2010, particularly with regard to where responsibility lies for the cost of the tests undertaken. These powers are only provided to local authorities and the Regulator, and not to private sector building control.

Changes to enforcement for all buildings

Compliance and stop notices

The Building Safety Act 2022 strengthens enforcement of building regulation breaches and enables local authorities and the Regulator to issue compliance and stop notices where building regulations have been breached. Compliance notices will require specified remedial action by a set date.

Stop notices can only be issued in certain situations:

- carrying out work would contravene certain prescribed building regulations,
- an existing compliance notice has not been complied with, or
- works carried out contravene regulations and could potentially cause a risk of serious harm.

The stop notice will require work to which the stop notice related to be stopped altogether until remedial action has been taken. A stop notice can apply to a whole site, a part of a site or a specific area of work. These powers are available for a breach that occurred after 1 October 2023. Former enforcement powers are retained for any breaches that occurred prior to 1 October 2023.

The Regulator can issue notices for higher-risk building work (and other work it oversees under a regulator's notice) and local authorities can issue notices for all other building work. Failure to comply with either a compliance notice or a stop notice is a criminal offence and will carry a maximum penalty of an unlimited fine and/or two years in prison. These powers are not available to private sector building control.

A compliance notice or stop notice must relate to no more than one contravention or likely contravention of building regulations or a requirement imposed under building regulations. This is so that it is clear to the dutyholder the exact nature of the contravention and which law has been breached. Allowing multiple contraventions on one notice could result in confusion regarding the breach which could further delay enforcement. If there have been multiple contraventions or likely contraventions, then multiple compliance notices or stop notices will need to be issued. If multiple notices have been issued, then each notice will apply to a specific contravention relating to the relevant building regulation. Each contravention will require bespoke remedies and compliance periods. This approach, of requiring an individual notice for each contravention or likely contravention, provides clarity about what is required from the developer and allows flexibility in managing the construction of complex sites.

Compliance and stop notices must be served according to section 94 of the Building Act 1984. The only exception is where the recipient cannot be identified after reasonable enquiries have

been made. In this case, the notice can be affixed to a conspicuous part of the site or premises where the work to which the notice relates is carried out.

Where compliance and stop notices are issued, building control authorities must take reasonable steps to notify the following parties of the notice:

- The client, principal contractor (or sole contractor), principal designer (or sole or lead designer) for the work to which the notice relates;
- Where the Regulator is the building control authority, the local authority for the area in which the building is situated or the proposed building is to be situated;
- Where the notice relates to a contravention of Part B requirements of Schedule 1 in relation to a building to which the Regulatory Reform (Fire Safety) Order 2005 applies, or will apply after the work is completed, the enforcing authority (within the meaning of article 25 of that Order) for the building or proposed building;
- Where the client is a private registered provider of social housing or, in relation to refurbishment work, is either a private or public registered provider or social housing, the Regulator for Social Housing;
- Where the client is a landlord in relation to any dwelling contained in the building, the local housing authority for the area in which the building is located; and
- Where the notice relates to work to an existing higher-risk building, the accountable person who is responsible for the part of the building where the work is carried out.

A building control authority may withdraw a notice at any time. When a notice is withdrawn, the building control authority must notify the recipient by issuing a notice in writing.

Recipients can appeal notices within 21 days of the notice being issued. An appeal in the First-tier Tribunal can be made where the notice was erroneous in fact, wrong in law, unreasonable, or procedurally flawed. The effect of a compliance notice is suspended where there is an appeal of the notice to the First-tier Tribunal. The effect of a stop notice is not suspended where there is an appeal to the First-tier Tribunal.

Recipients of compliance notices can apply to the First-tier Tribunal for the compliance period to be extended. Similarly to an appeal, this application must be made within 21 days of the notice being given. An application for an extension will suspend the effect of a compliance notice until the application has been fully determined or quashed. Recipients of stop notices can apply to the First-tier Tribunal for a direction that the stop notice be suspended during an appeal. This application can be made at any time.

These changes, including an outline of the required contents of compliance and stop notices, are provided for in regulation 16 (Enforcement provisions) of the Building Regulations etc. (Amendment) (England) Regulations 2023. Regulation 16 is annexed to this letter.

Exceptions to enforcement

Regulation 47(a) of the Building Regulations 2010 currently lists requirements that are exempt from enforcement action under section 35 of the Building Act 1984. From 1 October 2023, this exemption has been removed and the requirements under regulation 47(a) are enforceable under sections 35 (prosecution), 35B (compliance notices) and 35C (stop notices) of the Building Act 1984.

Changes to the appeals process

Prior to the Building Safety Act 2022, the appeals process for building control regulations was varied. Some appeals were heard by the magistrates' court, some in the High Court, and others

were determined by the Secretary of State. With the establishment of the Regulator, the Government has rationalised the appeals process.

A specialist unit within the Property Chamber of the First-tier Tribunal has been established to deal with building control and safety appeals in England. This will create a high level of expertise within the First-tier Tribunal. This specialist unit will deal exclusively with building safety matters. The appeals procedure for most building control decisions in England therefore ultimately sits with the Tribunal. This takes into account the Regulator's position as a new building control authority and their oversight of building control authorities in England.

For higher-risk buildings, appeals follow a two-stage process. First, there is a statutory right to an internal review by the Regulator. The Government may prescribe what decisions are in scope, and can include building control approval, change control, and completion certificates. Where parties are still unhappy with decisions taken by the Regulator's internal appeals panel, the First-Tier Tribunal (Property Chamber) will handle escalated appeals.

For non-higher-risk buildings, the route of appeal under the Building Act 1984 (as amended) has transferred from the magistrates' court to the First-tier Tribunal. There is no review process by the Regulator and applicants will appeal direct to the Tribunal.

The exception to this is non-higher-risk buildings appeals and determinations formerly heard by the Secretary of State on use of materials, relaxation of building regulations, and refusal to give a plans certificate. These will be heard by the Regulator, with a further option to escalate to the First-tier Tribunal.

Transitional arrangements for the application of the Building Regulations etc. (Amendment) (England) Regulations 2023 to non-higher-risk building work

The amendments made to the Building Regulations 2010 do not apply to building work where a building notice is issued or full plans are deposited with the local authority in relation to the work or work has started before 1 October 2023. This excludes building work where the deposited plans are rejected by the local authority on or after 1 October 2023. If a building control body has not been notified of building work by this date a new building control approval application must be made and the new requirements will apply. If a building control body has been notified but work has not started before 6 April 2024, the dutyholder and competence regulations, the amendments to regulation 38 of the Building Regulations 2010 and the amendments to regulation 16 of the Building Regulations 2010 that require start on site and commencement notices will apply to this building work.

Changes to the approved inspectors building control regime for non-higher-risk buildings

The implementation of the new building control regime is also supported by the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023, which make the required amendments to the Building (Approved Inspectors etc.) Regulations 2010. These strengthen building control by raising the competence levels within the profession and increasing accountability.

Registration

Registered building control approvers

These changes include a registration process for registered building control approvers and registered building inspectors. The new registration system for registered building control

approvers, which are currently known as approved inspectors, commences on 1 October 2023 and becomes mandatory from 6 April 2024. The registration period for registered building control approvers is five years, after which they will need to re-register. This replaces the present system of approved inspectors. The current registration system operated on behalf of the Secretary of State by the Construction Industry Council Approved Inspectors Register (CICAIR) will cease to operate in April 2024.

Registered building inspectors

A new registration process for individuals has also been established. Individuals who wish to continue to work as, or to become registered building inspectors, will be able to register with the Regulator from October 1, and must do so from 6 April 2024 to continue their work. The Regulator has set out the registration requirements, including the Code of Conduct. Registered building inspectors will also need to follow the Building Inspectors Competence Framework. The length of registration for registered building inspectors is four years, after which they will need to re-register.

Cancelling initial notices because it covers higher-risk building work

One of the key changes of the new building control process is that only the Regulator will be able to act as the building control authority for higher-risk buildings in England. To facilitate this change in practice, the Building Safety Act 2022 (Commencement No.5 and Transitional Provisions) Regulations 2023 commences the required changes to the Building Act 1984 to switch-off dutyholder choice, should a project include higher-risk building work. The supporting regulations prevent initial notices or amendment notices from including higher-risk building work. New notices allow local authorities to alert approved inspectors and the person carrying out the work, should an initial notice or amendment notice be invalid due to the project including higher-risk building work. In addition, local authorities now have the ability to cancel an initial notice where a project that is overseen by an approved inspector becomes higher-risk building work. This can occur where, for example, the original plans change to increase the number of storeys to a building.

Changes to Initial Notices and Depositing Plans

These regulations make a number of other improvements, including a change of wording on initial notices, and other relevant forms, to include further details in relation to the person carrying out the work. They also make changes to the references to depositing plans, so they now refer to applications for building control approval.

Fire Safety Information

The amendments strengthen the fire safety information handover where regulation 38 of the Building Regulations 2010 applies. This requires the building control approver to confirm in a final certificate that the person carrying out the work has notified them that the fire safety information has been handed over, and a new ground for a local authority to reject a certificate where the confirmation is not provided in cases where it is required. Other changes include a new notice of intention to start work to be sent by the person carrying out the work to their approved inspector, and a further notice to be sent when they are satisfied the work has met the new definition of commencement as set out in these regulations. The approved inspector may reject this notice if they are not satisfied the work has 'commenced' and there is a right of appeal to the First-tier Tribunal against a rejection.

Connectivity

Further amendments made by these regulations include giving local authorities a new ground to reject initial notices that are not accompanied by a connectivity statement which sets out the details of any public electronic communications network in relation to which a connection is to be provided, or an exemption if applicable. They also introduce notices in relation to the rejection of an initial notice, amendment notice, plans certificate or final certificate.

Transitional arrangements for the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023

As outlined earlier in this letter there are special transitional provisions for higher-risk building work after 1 October 2023 and further information can be found at the start of this letter.

The Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023 impose new rules on building work overseen by approved inspectors, we have provided transitional provisions for these new rules.

For work for which an initial notice has been issued by an approved inspector and accepted (or treated as accepted) before 1 October 2023 then the new rules are disappplied. However, if the work has not started by 6 April 2024 then the new rules (such as dutyholder requirements, definition of commencement etc) will apply from 6 April 2024.

For work which has started by 6 April 2024, the approved inspector will be able to continue being the building control body and issue a final certificate when appropriate, subject to the other transitional provisions summarised in the following paragraphs.

If an initial notice is cancelled after 1 October 2023, then the transitional provisions will no longer apply.

For work for which an initial notice has been given by an approved inspector before 6 April 2024, and the approved inspector has become a registered building control approver by 6 April 2024:

- The approved inspector (now registered building control approver) can oversee the work through to completion, if their registration class is appropriate for the type of work being overseen.

For work for which an initial notice has been given by an approved inspector before 6 April 2024, but the approved inspector has **not** become a registered building control approver in relation to the work by 6 April 2024:

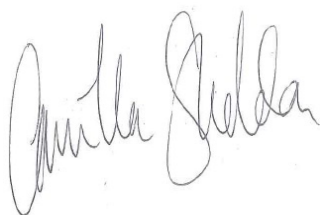
- The initial notice will continue to be valid until 1 October 2024. If a final certificate for the work is not issued by 1 October 2024, the initial notice automatically ceases on that date. A final certificate accepted by 1 October 2024 in relation to part of the work is not affected by the ending of the initial notice.

For work for which a new initial notice is issued on or after 1 October 2023 (or not accepted before that date), the new provisions and the amended Part 2 of the Building Act 1984 will apply. In particular, this means an initial notice or an amendment notice cannot include any higher-risk building work.

Enquiries

This letter provides guidance to building control bodies on the new building control regime. However, building control bodies must satisfy themselves that they understand the new regulatory changes. Should you have queries on this circular letter please email: Building-safety-regime@levellingup.gov.uk.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Camilla Sheldon', written in a cursive style.

Camilla Sheldon
Deputy Director: Reform Policy, Legislation and Sponsorship
Safer Greener Buildings Group
Department of Levelling Up, Housing and Communities

ANNEX A: Regulation 8 (Amendments: applications for building control) – The Building Regulations etc. (Amendment) (England) Regulations 2023

Amendments: applications for building control

8. For regulation 14 of the 2010 Regulations substitute—

“Applications for building control approval with full plans

14.—(1) An application for building control approval with full plans must be made in writing, signed by the person making the application (“the applicant”), and must include—

- (a) the name, address, telephone number and (if available) email address of the applicant;
- (b) where the applicant is not the client, the name, address, telephone number and (if available) email address of the client;
- (c) where known at the date of the application, the name, address, telephone number and (if available) email address of the principal contractor (or sole contractor) and the principal designer (or sole or lead designer);
- (d) a statement—
 - (i) that the application is an application for building control approval with full plans given under regulation 12(2)(b);
 - (ii) as to whether the building is a building to which the Regulatory Reform (Fire Safety) Order 2005 applies or will apply after completion of the building work;
- (e) where the work consists of work to an existing building, a description of the existing building including—
 - (i) details of the current use of the building, including the current use of each storey;
 - (ii) the height of the building;
 - (iii) the number of storeys in the building as determined in accordance with regulation 6 of the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023;
- (f) a description of the proposed work, including—
 - (i) details of the intended use of the building, including the intended use of each storey;
 - (ii) the height of the building after the proposed work;
 - (iii) the number of storeys in the building after the proposed work as determined in accordance with regulation 6 of the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023;
 - (iv) the provision to be made for the drainage of the building;
 - (v) where paragraph H4 of Schedule 1 imposes a requirement, the precautions to be taken in the building over a drain, sewer or disposal main to comply with the requirements of that paragraph;
 - (vi) the steps to be taken to comply with any local enactment that applies; and
 - (vii) a statement setting out—

(aa) the date when it is proposed the work will reach the point when it is to be regarded as commenced in accordance with regulation 46A (lapse of building control approval: commencement of work); and

(bb) where the work does not consist of work to which paragraph (2) or (3) of regulation 46A applies, details of the work which the client considers amounts to 15% of the proposed work.

(2) An application for building control approval with full plans must be accompanied by—

(a)(i) two copies of the full plans, or

(ii) where Part B of Schedule 1 (fire safety) imposes a requirement in relation to proposed building work, four copies of the full plans;

(b) where the application is made by someone on behalf of the client, a statement signed by the client confirming they agree to the application being made and that the information contained in the application is correct.

(3) Plans are only full plans if they consist of—

(a) a description of the proposed building work, renovation or replacement of a thermal element, change to the building's energy status or material change of use;

(b) the plans, particulars and statements required by paragraphs (1), (1A) and (2) of regulation 13;

(c) where paragraph H4 of Schedule 1 imposes a requirement, particulars of the precautions to be taken in building over a drain, sewer or disposal main to comply with the requirements of that paragraph; and

(d) any other plans which are necessary to show that the work would comply with these Regulations.

(4) Paragraph (2)(a)(ii) does not apply where the proposed building work relates only to the erection, extension or material alteration of a dwelling-house or flat.

Determination of applications for building control approval with full plans

14A.—(1) Subject to paragraph (5), where an application for building control approval with full plans is made in accordance with regulations 12(2)(b) and 14, the relevant authority must grant the application for building control approval unless the application (including the plans or other documents which accompany it)—

(a) does not comply with the requirements of regulation 14 (applications for building control approval with full plans);

(b) is not sufficiently detailed in any respect to allow the relevant authority to determine whether the proposed work would contravene any applicable requirement of the building regulations;

(c) shows that—

(i) the proposed work would contravene any applicable requirement of these Regulations; or

(ii) in a case where details are provided under regulation 14(1)(f)(vii), the work set out in the details would not in the relevant authority's opinion amount to 15% of the work.

(2) If the application for building control approval with full plans (or any plans or other documents which accompany it) is defective or shows that the proposed work would contravene any requirement of these Regulations, the relevant authority may—

(a) reject the application; or

(b) subject to paragraph (4), grant the application for building control approval subject to either or both of the requirements set out in paragraph (3).

(3) The requirements mentioned in paragraph (2) are—

(a) that such modifications as the relevant authority may specify must be made in the full plans, and

(b) that such further plans as the authority may specify must be provided before work to which those plans relate starts.

(4) A relevant authority may only grant an application for building control approval with full plans subject to a requirement in paragraph (3) if the person making the application (“the applicant”)—

(a) has requested in writing the authority does so, or

(b) has consented in writing to the authority doing so.

(5) The duty in paragraph (1) is subject to any provision in sections 19 to 25 of the Act which expressly requires or authorises the authority to reject an application for building control approval.

(6) The relevant authority must notify the applicant of the outcome of the application within five weeks beginning with the date the application is received by the relevant authority, or within such longer period as at any time the authority and the applicant agree in writing.

(7) A failure by the relevant authority to notify the applicant in accordance with paragraph (6) is not to be treated as a grant of the application or a rejection of the application.

(8) A notice that the application under paragraph (1) is rejected must give the reasons for the rejection.

(9) A notice that the application is granted subject to a requirement must specify the requirement imposed.

(10) Where the application for building control approval with full plans is successful the effect is that the building control approval is granted.

Appeal against a local authority’s rejection of an application for building control approval

14B.—(1) A person (“the appellant”) who has made an application for building control approval with full plans to a local authority may appeal to the regulator against the decision of the local authority to reject the application provided the appeal is made within 21 relevant days beginning with the day after the day on which the local authority notifies the person under regulation 14A(6) (determination of applications for building control approval with full plans).

(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 the Act.

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

(4) A person 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 person 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 the Act.

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

Appeal against the regulator’s rejection of an application for building control approval for work that is not higher-risk building work

14C.—(1) In relation to work for which the regulator is the building control authority pursuant to a regulator’s notice, a person (“the appellant”) who has made an application for building control approval with full plans to the regulator may appeal to the First-tier Tribunal against the decision of the regulator to reject the application provided the appeal is made within 21 relevant days beginning with the day after the day on which the regulator notifies the person under regulation 14A(6) (determination of applications for building control approval with full plans).

(2) The First-tier Tribunal may allow an appeal referred to in 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;

(d) that the decision was made without following the procedures set out in the Act or regulations made under the Act.

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

ANNEX B: Regulation 16 (Enforcement provisions) – The Building Regulations etc. (Amendment) (England) Regulations 2023

16.—(1) In regulation 47, for sub-paragraph (a) substitute—

“(a)(i) regulation 14A (determination of applications for building control approval with full plans),

(ii) regulation 15A (consultation in relation fire safety),

(iii) regulation 16(3D) (notice as to commencement of work),

- (iv)regulation 17 (completion certificates),
- (v)regulation 17A (certificate for building occupied before work is completed),
- (vi)regulation 18(6A) (appeal against refuse to grant certain certificates),
- (vii)regulation 18E(8) and (12) (appeals under section 101A of the Act),
- (viii)regulation 19C(2) (regulator’s notices: grounds for rejection),
- (ix)regulation 19E (regulator’s notices: direction),
- (x)regulation 20(6A) (provisions applicable to self-certification schemes),
- (xi)regulation 20A(7A) (provisions applicable to third party certification schemes),
- (xii)regulation 25A(3A) (consideration of high-efficiency alternative systems for new buildings),
- (xiii)regulation 27(4A) (CO₂ emission rate calculations),
- (xiv)regulation 27A(4A) (fabric energy efficiency rate calculations),
- (xv)regulation 27C(4A) (target primary energy rate calculations for new buildings),
- (xvi)regulation 37(3) (wholesome water consumption calculation),
- (xvii)regulation 41(3A) (sound insulation testing),
- (xviii)regulation 42(4) (mechanical ventilation air flow rate testing),
- (xix)regulation 43(6) (pressure testing),
- (xx)regulation 44(5) (commissioning),
- (xxi)regulation 44ZA(4) (commissioning in respect of a system for on-site electricity generation),
- (xxii)regulation 47B (compliance notices: contents),
- (xxiii)regulation 47C (stop notices: contents),
- (xxiv)regulation 47D(3) (compliance and stop notices: notification),
- (xxv)regulation 47E(2) (compliance and stop notices: withdrawal), and”.

(2) After regulation 47 (contravention of certain regulations not to be an offence) of the 2010 Regulations insert—

“Compliance notices: excluded provisions

47A. The following provisions of these Regulations are prescribed for the purposes of section 35B(7)(a) of the Act as provisions in relation to which a compliance notice(1) may not be given—

- (a)regulation 14A (determination of applications for building control approval with full plans),
- (b)regulation 15A (consultation in relation fire safety),
- (c)regulation 16(3D) (notice as to commencement of work),
- (d)regulation 17 (completion certificates),
- (e)regulation 17A (certificate for building occupied before work is completed),

- (f)regulation 18(6A) (appeal against refuse to grant certain certificates),
- (g)regulation 18E(8) and (12) (appeals under section 101A of the Act),
- (h)regulation 19C(2) (regulator’s notices: grounds for rejection),
- (i)regulation 19E (regulator’s notices: direction),
- (j)regulation 20(6A) (provisions applicable to self-certification schemes),
- (k)regulation 20A(7A) (provisions applicable to third party certification schemes),
- (l)regulation 25A(3A) (consideration of high-efficiency alternative systems for new buildings),
- (m)regulation 27(4A) (CO₂ emission rate calculations),
- (n)regulation 27A(4A) (fabric energy efficiency rate calculations),
- (o)regulation 27C(4A) (target primary energy rate calculations for new buildings),
- (p)regulation 37(3) (wholesome water consumption calculation),
- (q)regulation 41(3A) (sound insulation testing),
- (r)regulation 42(4) (mechanical ventilation air flow rate testing),
- (s)regulation 43(6) (pressure testing),
- (t)regulation 44(5) (commissioning),
- (u)regulation 44ZA(4) (commissioning in respect of a system for on-site electricity generation),
- (v)regulation 47B (compliance notices: contents),
- (w)regulation 47C (stop notices: contents),
- (x)regulation 47D(3) (compliance and stop notices: notification),
- (y)regulation 47E(2) (compliance and stop notices: withdrawal).

Compliance notices: contents

47B.—(1) A compliance notice given by a building control authority must be in writing and state—

- (a)that it is a compliance notice under section 35B of the Act;
- (b)the date the notice is given;
- (c)the name or description of the recipient; and
- (d)the consequences of failing to comply with the notice.

(2) A compliance notice must additionally—

- (a)describe the issue to which the notice relates;
- (b)identify the provision of building regulations, or the requirement imposed by virtue of building regulations, to which the compliance notice relates;
- (c)provide details of the nature of the contravention or likely contravention;

(d)state that the notice may be withdrawn by the building control authority;

(e)state that the recipient may apply to the First-tier Tribunal under section 39A(3) of the Act for an extension of the specified period for doing anything set out in the notice and state that any application must be made within 21 relevant days of the date the notice is given;

(f)state that the recipient may appeal to the First-tier Tribunal under section 39A(1) of the Act and state that any appeal must be made within 21 relevant days of the date the notice is given.

(3) A compliance notice must relate to no more than one contravention or likely contravention of building regulations or a requirement imposed by virtue of building regulations.

Stop notices: contents

47C.—(1) A stop notice given by a building control authority must be in writing and state—

(a)that it is a stop notice under section 35C(1)(a), 35C(1)(b) or, as the case may be, 35C(1)(c) of the Act;

(b)the date the notice is given and whether the notice applies immediately, or where it does not apply immediately, the date when it applies;

(c)the name or description of the recipient; and

(d)the consequences of failing to comply with the notice.

(2) A stop notice must additionally—

(a)describe the issue to which the notice relates;

(b)specify—

(i)in a case within section 35C(1)(a) of the Act, the provision of building regulations or requirement imposed by virtue of building regulations to which the stop notice relates;

(ii)in a case within section 35C(1)(b) of the Act, the compliance notice to which the stop notice relates;

(iii)in a case within section 35C(1)(c) of the Act, the provision of building regulations or requirement imposed by virtue of building regulations to which the stop notice relates;

(c)provide details of the nature of the contravention (including, in a case within section 35C(1)(c) of the Act, the nature of the serious harm that is anticipated);

(d)state that the recipient may appeal to the First-tier Tribunal under section 39A(5) of the Act and state that any appeal must be made within 21 relevant days of the date the notice is given; and

(e)state that the recipient may apply to the First-tier Tribunal under section 39A(6) of the Act for a direction.

(3) A stop notice must relate to—

(a)in a case within section 35C(1)(a) of the Act, no more than one contravention of a prescribed provision of building regulations or requirement imposed by virtue of such a provision;

(b)in a case within section 35C(1)(b) of the Act, no more than one compliance notice;

(c)in a case within section 35C(1)(c) of the Act, no more than one contravention of a provision of building regulations or a requirement imposed by virtue of such a provision.

Compliance notices and stop notices: giving of notices and notification of others

47D.—(1) Paragraph (2) applies where a compliance notice under section 35B of the Act or a stop notice under section 35C(1) of the Act is to be given in relation to work on a site or premises and another form of service under section 94(1) of the Act is not appropriate.

(2) Where, after reasonable inquiries, the building control authority is satisfied that there is no one to whom a compliance notice or stop notice can be delivered, the notice, or a copy of it, may be affixed to a conspicuous part of the site or premises where the work to which the notice relates is carried out.

(3) Where a building control authority gives a compliance notice or stop notice, the authority must take reasonable steps to notify the following persons as to the giving of the notice—

(a) the client, the principal contractor (or sole contractor) and the principal designer (or sole or lead designer) for the work to which the notice relates;

(b) where the regulator is the building control authority, the local authority for the area in which the building is situated or the proposed building is to be situated;

(c) where the notice relates to a contravention of Part B of Schedule 1 in relation to a building to which the Regulatory Reform (Fire Safety) Order 2005 applies or will apply after completion of the work, the enforcing authority (within the meaning of article 25 of that Order) for the building or the proposed building;

(d) where the client is—

(i) in relation to any work, a private registered provider of social housing,

(ii) in relation to work other than the erection of a new building, any other registered provider of social housing,

the Regulator of Social Housing;

(e) where the client is a landlord in relation to any dwelling contained in the building, the local housing authority for the area in which the building is located; and

(f) where the notice relates to work to an existing higher-risk building, the accountable person who is responsible for the part of the building where the work is carried out.

(4) In this regulation—

“accountable person” has the meaning in given in section 72 of the Building Safety Act 2022;

“the Regulator of Social Housing” is the body established under section 80A of the Housing and Regeneration Act 2008.

Compliance and stop notices: withdrawal

47E.—(1) A building control authority may withdraw a compliance notice or stop notice.

(2) Where a building control authority withdraws a compliance notice or stop notice it must as soon as reasonably practicable give the recipient a notice in writing to that effect.

Appeal to the First-tier Tribunal in relation to a compliance notice or stop notice

47F.—(1) An appeal to the First-tier Tribunal under section 39A(1) or (5) of the Act must be made by the relevant date.

(2) The First-tier Tribunal may allow an appeal referred to in paragraph (1) only if it is satisfied that the giving of the compliance notice or stop notice in question was wrong on one or more of the following grounds—

(a) that the notice was given based on an error of fact;

(b) that the giving of the notice was wrong in law;

(c) that the giving of the notice was unreasonable;

(d) that the notice was given without following the procedures set out in the Act or regulations made under that Act (except regulation 47D(3)).

(3) If the First-tier Tribunal allows an appeal referred to in paragraph (1) it may quash or vary the compliance notice or stop notice.

(4) In this regulation the “relevant date” is—

(a) in the case of an appeal under section 39A(1), within 21 relevant days beginning with the date the compliance notice is given; and

(b) in the case of an appeal under section 39A(5), within 21 relevant days beginning with the date the stop notice is given.

Application to the First-tier Tribunal in relation to extension of the specified period in a compliance notice

47G.—(1) An application to the First-tier Tribunal under section 39A(3) of the Act in relation to a compliance notice must be made within 21 relevant days beginning with the date the compliance notice is given.

(2) In deciding the question set out in an application under section 39A(3) of the Act the First-tier Tribunal must consider whether the recipient of the notice has demonstrated they are unable to comply within the specified period and it is reasonable to extend it.

Application to the First-tier Tribunal for a direction in relation to a stop notice

47H. In deciding the question set out in an application to the First-tier Tribunal under section 39A(6) of the Act in relation to a stop notice, the First-tier Tribunal must consider whether it is fair and proportionate, having regard to any representations made, to give the direction.”.