



Department for Levelling Up,
Housing & Communities

Camilla Sheldon
*Deputy Director, Reform Policy,
Legislation and Sponsorship*

**Department for Levelling Up,
Housing and Communities**

Fry Building
2 Marsham Street
London SW1P 4DF

www.gov.uk/dluhc

To: (England only)

Local Government Chief Executives and
Heads of Building Control

Approved Inspectors

The Chief Fire Officer

Fire and Rescue Authorities

27 March 2024

Dear Sir, Madam,

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

I wrote in October 2023 (updated in February 2024) 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.

This letter covers additional questions and answers to provide clarification on the following:

- 1) transitional provisions
- 2) statutory consultations
- 3) work in existing higher-risk buildings
- 4) enforcement
- 5) lapse of plans

This letter does not cover the upcoming Registered Building Control Approval regulations – further communications will be shared on this in due course.

Yours faithfully,

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

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

There are 6 pages of questions and answers, covering:

- 1) transitional provisions
- 2) statutory consultations
- 3) work in existing higher-risk buildings
- 4) enforcement
- 5) lapse of plans

1) Transitional Provisions

1.1. I deposited full plans to the local authority for a higher-risk building, but the plans were rejected prior to 1 October 2023, do I benefit from the transitional provisions?

No. From 1 October 2023 if the local authority has rejected the plans the Building Safety Regulator (the Regulator) becomes the building control authority in relation to the building work and the higher-risk regime applies. To continue with the higher-risk building work the dutyholder must submit an application for building control approval to the Regulator, which must be approved before works can begin. If your plans were rejected prior to 1 October and you or the local authority contacted the Regulator about this question, then you should have already received notification from the Regulator explaining the next steps and that the higher-risk regime applies.

Further information and help on submitting and managing a building control application to the Regulator can be found [here](#).

1.2. Schedule 3 doesn't cover all possible scenarios in relation to transitional arrangements for higher-risk building work. How are these 'anomalies' handled by the Regulator?

If the project does not fit the descriptions set out in schedule 3 of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023, then from 1 October 2023 the Regulator becomes the building control authority in relation to the building work and the higher-risk regime applies. To continue with the higher-risk building work the dutyholder must submit an application for building control approval to the Regulator, which will need to be approved. The Regulator will take a pragmatic approach to how an application can be made and assessed in a timely manner. Where a project follows this route into the new regime a full completion certificate application will need to be submitted and approved before the building can be registered.

1.3. Do I still need to submit an application to the Regulator if the building work hasn't sufficiently progressed by 6 April 2024 but the project is being cancelled anyway?

No. An application for building control approval isn't necessary in instances such as these. However, it would be advisable to submit the notice specified in Schedule 3 paragraph 4(5) of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 to the Regulator, making it clear that the work is not now going to take place.

If in the future you consider reinstating the project, you must seek approval to carry out higher-risk building work. Failure to seek approval is an offence.

1.4. Where an initial notice is cancelled before 6 April 2024 or ceases to be in force with effect from 6 April 2024 do I need to submit an application for building control approval to the Regulator?

Yes. The transitional provisions state that the person intending to carry out the work must give a notice to the Regulator (within 10 days of the initial notice being cancelled) and submit a building control application.

1.5. How does the definition of “sufficiently progressed” relate to plans and notices covering more than one higher-risk building?

Schedule 3 Part 1 (paragraph 1) of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 states that where more than one higher-risk building is covered by the work in the plans or notice, then to continue to benefit from the transitional provisions, each building must be regarded as sufficiently progressed in its own right by 6 April 2024.

Sufficiently progressed is defined in subparagraph 6 as:

“(6) For the purposes of this paragraph work is to be regarded as sufficiently progressed—

(a) where the building work consists of the construction of a higher-risk building, when the pouring of concrete for—

(i) the permanent placement of the trench, pad or raft foundations, or

(ii) the permanent placement of piling, for that building has started;

(b) where the building work consists of work to an existing building, when that work has started;

(c) where the building work consists of a material change of use of a building, when work to effect that change of use has started.”

The construction of buildings where work has not been sufficiently progressed will become subject to the higher-risk regime overseen by the Regulator.

1.6. What is the difference between the use of the terms ‘sufficiently progressed’ and ‘commenced’?

‘Sufficiently progressed’ is utilised in reference to the transitional provisions for higher-risk buildings, where building work must have reached a specified stage prior to 6 April 2024 for the work to remain under the existing system. The term ‘commencement’ is used in reference to the three-year period associated with the automatic lapse of plans and notices. Building work, whether higher-risk or not, must have ‘commenced’ within three years of receiving building control approval to retain that approval.

1.7. Where the planned work incorporates both higher-risk and non-higher risk work, does all of the work transfer to the regulator if the transitional provisions are not met?

The transitional provisions in the Building (Higher-Risk Building Procedures) (England) Regulations 2023 apply only to higher-risk building work. Only higher risk building work is automatically transferred to the jurisdiction of the Regulator. Any other work specified in the full plans or initial notice can remain subject to the oversight of the existing building control body, unless the Regulator agrees to oversee it through the Regulator’s notice process.

1.8. What are the transitional arrangements for non-higher-risk buildings?

For non-higher-risk building work to benefit from the transitional arrangements and not have to meet the new requirements (for example the dutyholder and competence requirements and definition of commencement) the following conditions must have been met:

- Plans must have been deposited (and not subsequently rejected) with a local authority before 1 October 2023; or
- An initial notice must have been issued and accepted (or treated as accepted) before 1 October 2023; and
- Work must have started on site by 6 April 2024.

Any initial notices of an approved inspector (who has not become a registered building control approver) given before 6 April 2024 will lapse automatically on 1 October 2024 to the extent that any work is not covered by a final certificate.

If full plans have been deposited by a developer with the local authority before 1 October 2023, and the local authority rejected those plans on or after that date, then regulation 22(1) sets out that the amendments in SI 2023/911 apply to the work. Full plans rejected before 1 October 2023 are not given transitional protection under regulation 22(1). As such, the Building Regulations 2010 apply in full to work for which the local authority has rejected the plans before 1 October 2023.

2. Statutory Consultations

2.1. Regulation 6(1) of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 prescribes that a consultation between the Regulator and the relevant enforcing authorities under the Fire Safety Order 2005 (FSO) must take place before a building control approval application is determined. Can you confirm what the consultation covers?

The statutory consultation process provided for in the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 replicates Article 45 of the FSO and provides the fire and rescue services (FRS) with an enhanced ability to provide their views to the building control authority. Local FRS will be consulted before a building control approval application is determined, before a change control application is determined and before a completion certificate application is determined.

Regulation 6(2) and 6(3) prescribe that in consulting the FRS, the Regulator will need to provide sufficient plans to show where the proposed higher-risk building complies with the applicable requirements of Part B (fire safety) of Schedule 1 to the 2010 Regulations as amended, as well as a copy of the fire and emergency file. The consultation however is not restricted to compliance with Part B or the chance to scrutinise the fire and emergency file – which contains information on how the duty holder has considered fire and structural safety, assumptions about the intended occupiers of the building and how the building will operate and be managed safely once complete - the FRS can provide any comments it sees fit in line with its duties under the FSO.

Regulation 6 applies where a building control approval application is submitted for a new higher-risk building. The same applies for regulations 14 (building control approval application for work in an existing higher-risk building), 23 (change control applications), 42 (completion certificate applications) and 45 (partial completion certificate applications).

Furthermore, a key tenet of the new building control regime is the use of multi-disciplinary teams (MDT) to inform key regulatory decisions on higher-risk buildings. The FRS will play an integral role in the MDTs, providing advice on fire-safety related matters in addition to their role as a statutory consultee.

The FRS will have ongoing regulatory oversight of the building under the FSO after completion, and the BSR will regulate the building in occupation under Part 4 of the Building Safety Act 2022.

3. Work in relation to existing higher-risk buildings

3.1. Are there situations where work to an existing higher-risk building isn't controlled by the Regulator?

Yes. Work completed under a competent person scheme, third party certification scheme or classified as exempt work in Schedule 2 of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023, does not require an application for building control approval to be made to the Regulator.

You should check what is classified as a higher-risk building before doing building work. Guidance on the definition of a higher-risk building can be found [here](#). Where a new building is being constructed the whole of the overall structure is the higher-risk building for the purposes of building control. The definition of higher-risk building is different where work is being done to an existing building. If multiple structures are connected, then the building may be split into independent sections in certain circumstances. Any independent section which does not meet the height/storey threshold is not considered a higher-risk building and is not therefore subject to oversight of the Regulator.

Whilst work completed under a competent person scheme or a third party certification scheme need not be overseen by the Regulator, certain information about that work and any changes to the fabric or systems within the building does need to be recorded in the golden thread of information. If this work is extensive there may also need to be an update to the safety case report for the building.

Certain information about exempt work may also be required to be kept as golden thread information if that information relates to maintenance and repairs to any equipment, device or materials (whether or not a fixture or part of the fabric of the building) to comply with section 84(1) (management of building safety risks) of the Building Safety Act 2022.

3.2. Can work to extend an existing higher-risk building, intended to create an independent section upon completion of the works, be treated as an independent section for the construction stage under regulation 4 of the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023?

No. The rules relating to independent sections apply only after a building has been constructed. Whilst in construction, regulation 4(5) disapplies regulations 4(2) and 4(4), meaning the proposed work cannot be considered as an independent section.

When a new building is first being constructed, then the entire overall structure is considered a single building. If the building meets the height or storeys threshold and contains at least two residential units or is or contains a care home or hospital, that building (the entire overall structure) will be a higher risk building.

For existing buildings undergoing works or where existing buildings are being extended it may be possible to split the overall structure (where structures are connected) into

independent sections. Each independent section is then considered a separate 'building' for the purposes of the higher-risk regime. When a 'building' which meets the definition of a higher-risk building is extended, the work would fall under the jurisdiction of the Regulator. An extension to an independent section that does not meet the definition of a higher-risk building can be overseen a building control body other than the Regulator.

3.3. Will the Regulator notify a local authority that it is overseeing higher-risk building work in its area?

No. For work which entirely comprises higher-risk building work, the Regulator will not alert the local authority to the fact it is overseeing this work. Where proposed work comprises both higher-risk and non-higher risk work and the developer opts for the Regulator to oversee the entire project, then a Regulator's notice must be sent to the relevant local authority.

3.4. What is meant by the term 'becomes a higher-risk building'?

An existing building can 'become' a higher-risk building if it is undergoing work (for example adding storeys) or a change of use which bring it into scope of the definition of a higher-risk building. Similarly, if the original plans for a building change, meaning it will now meet the higher-risk building height/storeys threshold and use criteria, the project will 'become' higher-risk building work.

4. Enforcement powers

4.1. When can compliance notices be issued?

Compliance notice powers became available on 1 October 2023 for all projects, including those that started under the pre-1 October system. For a compliance notice to be issued there needs to be a contravention (or the likely contravention) of a relevant provision of building regulations or a requirement imposed by the regulations.

From the 1 October 2023, if there is a contravention on site, then a compliance notice can be given. A compliance notice can also be issued for a contravention that occurred pre-1 October as long as the contravention is ongoing at the point the notice is issued. When the breach occurred is irrelevant (unless the contravention occurred more than 12 months ago, in which case a compliance notice may not be issued), the building control authority just needs to be satisfied at the point of issue that a person appears to have contravened a relevant provision and that they want it to be rectified.

4.2. When can stop notices be issued?

Stop notice powers became available for use on 1 October 2023. Their use is restricted to a limited set of circumstances as detailed in the Building Act 1984:

35C Stop notices

(1)The building control authority may give a stop notice to a person appearing to the authority to be in control of any work if it appears to the authority that—

(a)the carrying out of the work would contravene a provision of building regulations prescribed for the purposes of this paragraph,

(b)a compliance notice relating to the work has been contravened, or

(c) the work contravenes a provision of building regulations or a requirement imposed by virtue of such a provision, and the risk of serious harm condition is met.

Stop notices can only be issued under section 35C(1)(a) in relation to specified procedural breaches related to higher-risk building work.

Stop notices in relation to section 35C(1)(b), the contravention of a compliance notice, can only be issued for breaches that occur post 1 October 2023 (as compliance notices are a new power). Whether the contravention started pre or post 1 October is irrelevant. For example, a compliance notice could be issued on or after 1 October for a contravention that occurred before that date (so long as the contravention is ongoing at the point of issue). If the recipient fails to take the required action in the specified time period, then a stop notice can be issued.

A stop notice under section 35C(1)(c) can be issued on or after 1 October 2023 for building work which breaches this condition, irrespective of when the breach started – as long as the issue giving rise to a risk of serious harm is ongoing at the point of the stop notice is issued.

Failure to comply with either a compliance notice or stop notice could result in criminal sanctions, and any notices received (in the preceding 5 years) may have to be disclosed to the Regulator when making further applications for building control approval for higher-risk building work.

4.3. Can the new/updated provisions in the Building Act 1984 pertaining to the penalty for contravention of building regulations and section 36 notices be applied to projects that started before 1 October 2023?

Yes, the new powers are retroactive. So long as the contravention of building regulations is ongoing at the point of action being taken (and for the issue of section 36 notices is within the specified time limit), the new provisions can be applied to any project, irrespective of start date. However, any prosecutions under section 35/35A already before a court on 1 October 2023, or section 36 notices served before that date, remain subject to the previous provisions.

5. Lapse of plans

5.1. What happens if work in relation to plans and notices submitted prior to 1 October 2023 has not started prior to 6 April 2024?

Until 6 April 2024 the existing lapse of building control provisions continue to apply in relation to existing plans or initial notices which were submitted before 1 October 2023. If work under those plans or notices has not started before 6 April 2024 then the new rules in relation to the lapse of plans will apply from that date.

Links to legislation

[The Building \(Higher-Risk Buildings Procedures\) \(England\) Regulations 2023](#)

[The Regulatory Reform \(Fire Safety\) Order 2005](#)

[The Building Regulations 2010](#)

[The Higher-Risk Buildings \(Descriptions and Supplementary Provisions\) Regulations 2023](#)

[Building Act 1984](#)