EXPLANATORY MEMORANDUM TO

THE BUILDING (APPROVED INSPECTORS ETC.) (AMENDMENT) (ENGLAND) REGULATIONS 2022

2022 No. 718

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Building (Approved Inspectors etc.) Regulations 2010 ("the 2010 Regulations") flowing from the amendments to the Building Act 1984 made by section 48 of the Building Safety Act 2022. The changes to the Regulations remove the requirement for approved inspectors to declare they have insurance when submitting an initial notice, an amendment notice, a plans certificate or a final certificate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The 2010 Regulations, together with Part 2 of the Building Act 1984, allow for the supervision of building work to be carried out by a private sector inspector approved under section 47 of the Building Act 1984 as an alternative to the local authority. Section 47(6) provides for the Secretary of State to approve any insurance schemes which appear to provide adequate insurance cover in relation to work supervised by an approved inspector. Sections 47(1)(c) and 51A(2)(c) of the Building Act 1984 and provisions of the 2010 Regulations require approved inspectors to provide a declaration that they hold such insurance when they submit an initial notice, an amendment notice, a plans certificate or a final certificate. Section 47 of the Building Act 1984 is amended by the Building Safety Act 2022 to remove the requirement for the Secretary of State to approve insurance schemes and to omit sections 47(1)(c) and 51A(2)(c) from the Building Act 1984. This instrument makes amendments to the 2010 Regulations which flow from the amendments to the Building Act 1984. In particular, this instrument revokes regulation 5A of the 2010 Regulations which required a local authority to

ensure the person who approved them was in possession of a declaration of insurance before the inspector issues such a notice or certificate.

6.2 This instrument also makes a number of other consequential amendments including amending regulation 7 of the 2010 Regulations so there is no requirement to keep a copy of the declarations of insurance referred to in regulation 5A; amending regulation 9(4) so it refers to insurance more generally and amending the forms in Schedule 1 to the 2010 Regulations to remove references to the declarations of insurance, and corresponding amendments to the grounds for rejection of a notice or certificate by the local authority in Schedules 2, 3 and 4 to the 2010 Regulations.

7. Policy background

What is being done and why?

7.1 This instrument removes the requirement for approved inspectors to provide a declaration of adequate insurance when performing a number of their statutory functions, such as submitting initial notices, amendment notices, plans certificates and final certificates. This change to regulations operationalises the recent Building Safety Act 2022 amendments to section 47 etc of the Building Act 1984 on approved inspector insurance (which removed the requirement for the Secretary of State to approve insurance schemes and for approved inspectors to hold insurance through one of the Government-approved schemes). Under provisions in section 42 of the Building Safety Act, the new Building Safety Regulator has been given powers to set up insurance oversight of Approved Inspectors, should it choose to do so. The Department will work with the Regulator to establish how an insurance oversight mechanism may work.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 Existing secondary legislation required approved inspectors to provide the declaration of adequate insurance to the person who approved them and to confirm the declaration of insurance when performing a number of their statutory functions, such as the signing of final certificates. This secondary legislation operationalises amendments made to section 47 etc of the Building Act 1984.

Why is it being changed?

7.3 Significant changes in the professional indemnity insurance market, due to an overall market contraction, have on multiple occasions threatened to collapse the approved inspector sector and further engulf local authorities in regulating a significant additional number of building projects. The impacts of these events would be to the detriment of the building control profession as it loses capacity and expertise, to the cost of construction project owners and to the detriment of the government approved schemes. Whilst these issues have been narrowly averted, they remain a real concern. Removing the requirement for Government-approved insurance is designed to make the approved inspector sector more resilient and flexible in the face of insurance market fluctuations, and to create alignment on insurance requirements between approved inspectors and other professions.

What will it now do?

7.4 This instrument removes the requirement for approved inspectors to provide proof of adequate insurance when performing a number of their statutory functions, such as the

signing of final certificates. Powers for insurance oversight will pass to the new Building Safety Regulator as part of its professional standards for building control, should it so choose.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger statements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There are no immediate plans to consolidate the Building (Approved Inspectors etc.) Regulations 2010.

10. Consultation outcome

10.1 No consultation has been carried out in relation to the provisions of this instrument as they are procedural and purely consequential on the amendments made to section 47 etc of the Building Act 1984.

11. Guidance

11.1 The Department has no plans to issue any guidance in relation to these changes. In the short term, it will be at the discretion of the current Approved Inspector regulatory body CICAIR to change its current guidance on insurance. The Department will withdraw approval for its current schemes after the enactment of this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies is around **£2,400** based on familiarisation costs for brokers and insurers with the removal of the requirement for government approval for any Approved Inspector insurance scheme. Costs to businesses are otherwise unexpected to change, and therefore no costs will be passed on to consumers.

12.2 However, had this legislation not been enacted, a worst-case scenario would have seen Approved Inspectors unable to fulfil their statutory functions due to a lack of insurance. This would have left c. 44,000 building projects at risk of reversion to local authority building control, which would not have had the capacity to handle this caseload. Analysts have hypothesised the cost of an 8-week delay before completion of these projects to be worth a loss in overall construction value of £55.9million. **This is considered an indirect monetised benefit.**

12.3 The impact on the public sector is **minimal.** While local authorities may incur very small familiarisation costs in changing the forms Approved Inspectors must fill in to complete their statutory functions, the public sector is expected to be minimally affected by this instrument. Powers for regulating approved inspector insurance will lie with the Building Safety Regulator, should the Regulator choose to use them.

12.4 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. The majority of approved inspectors are small businesses, at around 82%.

13.2 We do not think smaller approved inspectors will be subject to premium increases. The risks for smaller approved inspectors have not materially changed as a result of these Regulations, and insurers have previously been able to negotiate premiums at their discretion under the current Government-approved schemes.

13.3 There is a risk that small approved inspector businesses may see greater restrictions on levels of cover than larger firms, due to a lesser scope for insurers to diversify risk across a firm's breadth of work.

13.4 However, exempting small businesses by continuing to require them to hold insurance through a scheme is not a viable option: it is not commercially viable for any insurer to set up a scheme just for small businesses and as such, smaller approved inspectors would not be able to obtain insurance. Consequently, even if small approved inspectors experience greater constraints on cover for than larger ones, they remain in a better position to obtain insurance on the open market than through a scheme.

14. Monitoring & review

14.1 The Department will monitor the effects of this policy as part of the broader raft of secondary legislation being introduced following the introduction of the Building Safety Act 2022.

14.2 Under the provisions of new Part 2A of the Building Act 1984 (inserted by section 42 of the Building Safety Act 2022), the new Building Safety Regulator has been given powers to set up insurance oversight of approved inspectors, should it choose to do so. This may include monitoring of insurance arrangements.

14.3 Prior to the commencement of the Regulator's new powers, the Construction Industry Council Approved Inspectors Register Limited (CICAIR) is responsible for monitoring the activities of approved inspectors under the Building Act 1984 and the Building (Approved Inspectors etc.) Regulations 2010. Consequently, in the short term, CICAIR will monitor the effect of the amendments made by this instrument.

14.4 The instrument does not include a statutory review clause and, in line with the requirements of section 31 of the Small Business, Enterprise and Employment Act 2015 Lord Stephen Greenhalgh has made the following statement:

The regulatory measures in this instrument are within the scope of the periodic review provided for in section 162 of the Building Safety Act 2022, and it would not be appropriate in the circumstances to make provision for a separate review in this instrument.

15. Contact

15.1 Tom McGivern/William Peart at the Department for Levelling Up, Housing and Communities Email: tom.mcgivern@levellingup.gov.uk/ william.peart@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anita Shah, Deputy Director for Financial Markets & Insurance division at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Stephen Greenhalgh at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.