EXPLANATORY MEMORANDUM TO

THE BUILDING (REGISTERED BUILDING CONTROL APPROVERS ETC.) (ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 No. 474

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 His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Lee Rowley, Minister of State for Housing, Planning and Building Safety at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

2.2 Chandru Dissanayeke, Director for Regulatory Stewardship and Reform, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Marta Musolino at the Department for Levelling Up, Housing and Communities email: buildingsafetyandreformcorrespondence@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Building (Registered Building Control Approvers etc.) (England) (Amendment) Regulations 2024 (the instrument) corrects errors in the Building (Registered Building Control Approvers etc.) (England) Regulations 2024 ("the RBCA regulations") to ensure those regulations work as intended.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The RBCA regulations were introduced to consolidate and replace the Building (Approved Inspectors etc.) Regulations 2010 and implement the changes introduced

through the Building Safety Act 2022 and the practical operation of the new Registered Building Control Approver (RBCA) regime.

5.2 The instrument rectifies technical errors within the RBCA regulations.

5.3 Regulation 2(2) and (3) correct typographical errors. Regulation 2(4) remakes regulation 32(3) of the RBCA regulations as the power to make that paragraph was not cited in the preamble to those regulations.

5.4 The amendment to regulation 44 will ensure that the correct paragraphs are omitted during the transitional period. The amendment to Schedule 4 removes the obligation on local authorities to reject a final certificate if it relates to a building covered by the Fire Safety Order and no plans certificate was submitted. These amendments ensure that the original policy intent is achieved.

5.5 The higher-risk regime has been introduced simultaneously alongside the registration of the building control profession. The Building Safety Regulator has been introduced and must act as the building control body for any building work or material change of use related to a higher-risk building. The transitional period for the introduction of the higher-risk regime is 1 October 2023 to 6 April 2024.

5.6 From 6 April 2024, if building work, which from 1 October 2023 is defined as higher-risk building work, has met the conditions within the higher-risk regime transitional provision then it will remain under the existing system. The RBCA regulations form part of those transitional provisions for work overseen by private sector building control. An error within the RBCA regulations prevent these projects from operating under the existing system for private sector building control as intended.

5.7 Once these projects are complete and the building work meets building regulations requirements, under the existing system a final certificate will be issued. There is an incorrect reference which prevents final certificates being issued for the projects which have meet the transitional conditions as they contain higher-risk building work. As made, in order for the completed building work to receive a certificate, it will have to transfer into the higher-risk regime under the Regulator, which is not the policy intent.

5.8 The error undermines the intent of the transitional provisions for the higher-risk regime. It risks transferring projects to the Regulator that were meant to remain with their existing building control authority. The transfer of projects to the Regulator is also likely to create delays for each project that was deemed progressed enough to remain under the existing system.

What was the previous policy, how is this different?

5.9 The policy has not changed. This instrument corrects errors within the RBCA regulations to ensure the policy is implemented correctly.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument corrects errors which were identified within the RBCA regulations.

Why was this approach taken to change the law?

6.2 This is the only possible approach to rectify the errors which have been identified and ensure a consistent approach across England. The RBCA regulations come into force

on 6 April 2024 and if they are not corrected this could lead to building control bodies taking ultra-vires actions.

7. Consultation

Summary of consultation outcome and methodology

7.1 Section 120B(3) of the Building Act 1984 requires the Secretary of State to consult the Building Safety Regulator and any other person that the Secretary of State considers appropriate before making regulations.

7.2 The Building Safety Regulator was consulted and agreed with the proposals within this instrument to amend the RBCA regulations.

7.3 As the amendments to the RBCA regulations are to rectify errors we do not consider there are any other associated persons which need to be consulted.

7.4 The Department did not conduct a public consultation on the measures in this instrument. The instrument amends errors within the RBCA regulations to ensure the impact of the legislation aligns with the intended policy outcomes. The policy underpinning these regulations was consulted on from 31 January 2023 to 14 March 2023 and as such we did not consider further consultation was required.

7.5 As the regulations only apply to England, we did not consult the devolved administrations.

8. Applicable Guidance

8.1 Guidance will be produced on the relevant provisions within the RBCA regulations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the instrument corrects errors within the RBCA regulations. An impact assessment for those regulations was prepared and describes the intended policy outcomes. That impact assessment can be found here.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does impact small or micro businesses.

9.4 No exemption is needed as it will allow the businesses to continue operating as intended.

9.5 The impact on the public sector is the same as for the private sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 We do not plan to monitor this instrument as it amends errors rather than implementing new policy.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the

Minister of State for Housing, Planning and Building Safety, Lee Rowley MP 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."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Regulations 1 and 2(1), (5), (6) and (7) will come into force before 21 days have passed since they were laid in Parliament. As stated above, the RBCA regulations come into force on 6 April. In their current form, because of the errors identified, those regulations are inconsistent and defective in certain respects. These provisions correct those errors. If the errors are not corrected before the regime comes into force there is a real risk of disruption to industry, confusion in the sector and delay to building projects. There is also a risk that local authorities, businesses or those supervising building work inadvertently fall foul of the law.

12. European Convention on Human Rights

12.1 The Minister of State for Housing, Planning and Building Safety has made the following statement regarding Human Rights:

"In my view the provisions of the Building (Registered Building Control Approvers etc.) (England) (Amendment) Regulations 2024 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").