EXPLANATORY MEMORANDUM TO

THE BUILDING REGULATIONS ETC. (AMENDMENT) (ENGLAND) REGULATIONS 2025

2025 No. 1017

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government 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 Samantha Dixon MP, Parliamentary Under-Secretary of State in the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Alexandria Parish, Deputy Director for Building Professions Division, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Scott Ritchie at the Ministry of Housing, Communities and Local Government can be contacted by email at the following address with any queries regarding the instrument: reversions@communities.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations amend the Building (Registered Building Control Approvers etc.) England Regulations 2024 (the RBCA Regulations) and the Building Regulations 2010 (the 2010 Regulations) to correct errors, improve regulatory oversight and create consistency across the building control regimes.

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 operation of a new Registered Building Control Approved regime and the 2010 Regulations were amended by The Building

Regulations etc. (Amendment)(England) Regulations 2023 to also implement changes introduced by the Building Safety Act 2022.

5.2 The Building Regulations etc. (Amendment) (England) Regulations 2023 inserted Part 2A of the Building Regulations 2010, creating dutyholder requirements to improve the accountability of clients, designers and contractors in building work. Corresponding changes were made to other parts of the Building Regulations so that procedural requirements existed for dutyholders regarding their duties. This included requirements to make declarations regarding the compliance of work with building regulations when work is completed.

5.3 While these changes were implemented for most building control routes, the collapse of certain private sector building control providers highlighted that where work reverted to Local Authorities and was being regulated by them via that route, these requirements did not exist. This was not intentional and so this amendment seeks to correct this by creating a new completion notification requirement for works which have reverted to the Local Authorities which aligns with those which exist across the building control regime and ensures the relevant dutyholder requirements are complied with in these instances.

5.4 Inconsistencies were also identified regarding dutyholder statements whereby in the Higher Risk Building regime, there was a route by which a person carrying out work could inform the building control body if it was not possible for them to have the dutyholder give a statement. For example, if a compliance statement from the Principal Designer or Contractor cannot be obtained (e.g. due to retirement or business closure), the client must explain why in the completion notice. Amendments in these regulations will now ensure that this is also possible in the non-Higher Risk Buildings regime also. This was drafting error which is being rectified.

5.5 The collapse of some private sector building control bodies and reversion of their work to Local Authorities saw an increased use of a specific type of Cancellation Notice under section 52(3) of the Building Act 1984, where the person carrying out the work initiates the cancellation. In this process it was identified that the legal framework could allow for someone carrying out work who receives a contravention notice from a Registered Building Control Approver (RBCA) to cancel an Initial Notice themselves at this point and seek to find a more compliant regulator for their work.

5.6 This is not the intention of the legislation and so this instrument makes amendments which will introduce additional grounds for Local Authorities to reject an Initial Notice if the applicant has previously received a contravention notice and failed to address it, thus stopping individuals from avoiding enforcement by switching RBCA after receiving a contravention notice. It also introduces corresponding provisions so the person submitting the Initial Notice is required to inform the Local Authority as part of the prescribed form.

5.7 The RBCA Regulations prescribe notification to Local Authorities where the Building Safety Regulator (BSR) issued certain disciplinary orders against an RBCA. Serious contravention notices were omitted in those regulations, in error. These regulations therefore extend the notification requirement to serious contravention orders to create consistency with other similar disciplinary orders given by the BSR to an RBCA. This will enhance transparency and ensure Local Authorities are informed and can consider whether there is any action they too may need to take.

What was the previous policy, how is this different?

5.8 The policy intent has not changed. Previously, the regulations created unintended consequences allowing for potential non-compliance to be exploited and inconsistencies across the regimes. These measures will close these legislative gaps and ensure policy is implemented consistently and correctly.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument makes amendment to the RBCA Regulations and the 2010 Regulations, to correct errors and fix unintended consequences arising from the RBCA Regulations and amendment made to the 2010 Regulations, which implemented changed made by the Building Safety Act 2022.

Why was this approach taken to change the law?

6.2 This is the only possible approach to correct the errors and make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with section 120B(3) of the Building Act 1984, the Secretary of State has consulted the regulator and other persons considered appropriate.

7.2 Given the nature of the changes, a limited consultation was conducted to consult relevant stakeholders and groups. This consultation included the Building Safety Regulator, Local Authority Building Control, the Association of Building Control Approvers (ABCA) and NHBC. We also informed members of the Industry Competence Committee Building Control Working Group.

7.3 Consultation responses were supportive of the proposals overall. Some responses suggested further changes for the Government to consider but which would represent a broader change to policy rather than correct the errors and fix the unintended consequences identified. These will be considered as part of future policy development. One consultation respondent disagreed with the proposal to extend the requirement for LAs to be notified by the Regulator where an RBCA receives a Serious Contravention Notices on the basis that they disagreed with the primary legislation's restriction of this notification of disciplinary order notification to LAs regarding RBCA orders where there is no corresponding provision for notification of other bodies by the Regulator when an LA receives a disciplinary order. As this is a disagreement with the original policy intent and primary legislation rather than the specific change, we have not omitted the amendment to the regulation but will consider their view as part of wider policy development.

7.4 The Welsh Government has also been notified of our intention to make these changes, though they will only affect England.

8. Applicable Guidance

8.1 The Industry Competence Committee Building Control Working Group will be consulted as to whether guidance is considered necessary given the technical nature of the amendments. Any existing guidance which makes reference to these provisions will be updated to account for the changes.

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 this SI makes technical amendments to the Building Regulations and RBCA Regulations so they can work as intended, according to existing policy intent. The original impact assessment for the RBCA Regulations can be found here: https://www.legislation.gov.uk/uksi/2024/110/impacts. The original impact assessment for the amendments to the Building Regulations 2010 which introduced the Part 2A dutyholders regime can be found here: https://www.legislation.gov.uk/uksi/2023/911/impacts.

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 There is no, or no significant, impact on the public 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 formally as it amends errors and ensures existing policy intent is correctly implemented rather than implementing new policy.

10.2 The approach to monitoring this legislation is informal continual engagement with the sector to ensure the changes have positively impacted the building control process.

10.3 As per sections 28 and 31 of the Small Business, Enterprise and Employment Act 2015, Samantha Dixon MP, Parliamentary Under-Secretary of State in the Ministry of Housing, Communities and Local Government, 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

Matters of special interest to the Joint Committee on Statutory Instruments

11.1 This instrument corrects defects in the RBCA Regulations and the 2010 Regulations. Therefore, it is appropriate to apply the free issue procedure to this instrument.

12. European Convention on Human Rights

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

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").