**EXPLANATORY MEMORANDUM TO**

# THE BUILDING SAFETY ACT 2022 (CONSEQUENTIAL AMENDMENTS AND PRESCRIBED FUNCTIONS) AND ARCHITECTS ACT 1997 (AMENDMENT) REGULATIONS 2023

**2023 No. 229**

## 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. Purpose of the instrument

2.1 This instrument makes a number of amendments which are consequential on the commencement of section 9(3) of the Building Safety Act 2022 which abolishes the Building Regulations Advisory Committee for England (BRAC).

2.2 The Regulations also prescribes the function of acting as statutory consultee under the Town and Country Planning Act 1990 and section 54 of the Planning and Compulsory Purchase Act 2004 in relation to higher-risk buildings as a function of the regulator, the Health and Safety Executive, under section 3 of the Building Safety Act 2022.

2.3 The instrument also amends Schedule 1 of the Architects Act 1997 following the passage of the Architects (Fees, Electronic Communications and Miscellaneous Amendments) Regulations 2022 to ensure committee members have the appropriate voting rights to fulfil their function.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 This instrument is the first exercise of the power in section 3(5) of the Building Safety Act 2022.

3.2 Free replacement copies of this instrument are being issued to all known recipients of S.I. 2022/1388 as this instrument has been made in part in consequence of a defect in that instrument. That defect was identified in the JCSI's 26th report of session 2022-23.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument (other than regulation 4) is England and Wales, Scotland and Northern Ireland. Regulation 4 extends to England and Wales.

4.2 The territorial application of this instrument (other than amendments in regulation 2(2) and (3), and regulation 4) is England and Wales, Scotland and Northern Ireland. The amendments in regulation 2(2) and (3), and regulation 4, apply in relation to 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 necessary.

## 6. Legislative Context

6.1 Under section 9(3) of the Building Safety Act 2022 BRAC is abolished. The abolition takes effect on 1st April 2023. Regulations 2 and 3 of this instrument make a number of amendments which are consequential on the abolition of BRAC.

6.2 Under section 2 of the Building Safety Act 2022 the Health and Safety Executive is the regulator for the purposes of Part 2 of the Act. Under the Town and Country Planning Act 1990 and section 54 of the Planning and Compulsory Purchase Act 2004, the Health and Safety Executive must be consulted in relation to development proposals for higher-risk buildings or proposed higher-risk buildings. Regulation 4 of this instrument provides that the Health and Safety Executive's functions as statutory consultee are "building functions" for the purposes of Part 2 of the Building Safety Act 2022. Now section 2 of the Building Safety Act 2022 is in force (i.e. the regulator has been established in the HSE) it is important to put its function as statutory consultee under the Town and Country Planning Act 1990 in relation to higher-risk buildings on a more formal footing. Regulation 4 of the Regulations makes this provision.

6.3 The Architects (Fees, Electronic Communications and Miscellaneous Amendments) Regulations 2022, S.I. 2022/1388, amended paragraph 19 of Schedule 1 to the Architects Act 1997 to enable the Architects Registration Board to include members on its committees who are not members of the Board. Regulation 5 omits paragraph 20 of that Schedule so that those members can vote to discharge the function for which the committee is set up.

## 7. Policy background

***What is being done and why?***

7.1 Regulations 2 and 3 amend two instruments to remove reference to BRAC and section 14 of the Building Act 1984. These are necessary as a consequence of the abolition of BRAC.

7.2 Regulation 4 prescribes certain functions of the Health and Safety Executive as "building functions" for the purposes of Part 2 of the Building Safety Act 2022.

7.3 Regulation 5 amends Schedule 1 to the Architects Act 1997 to omit paragraph 20. The amendment follows amendments made to paragraph 19 of that Schedule by the Architects (Fees, Electronic Communications and Miscellaneous Amendments) Regulations 2022.

## 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 Not applicable.

## 10. Consultation outcome

10.1 The Secretary of State consulted the Health and Safety Executive in relation to the proposals in regulation 4 of these Regulations.

10.2 The Department conducted stakeholder engagement with the Architects Registration Board and other interested parties throughout its policy development. Stakeholders have been supportive of the proposed amendment.

10.3 The Building Safety Bill received Royal Assent and became an Act of Parliament on 28 April 2022. The Department consulted extensively on the policies, including through a formal consultation process and informal consultation with relevant bodies.

## 11. Guidance

11.1 The Department has no plans to issue any guidance in relation to these changes.

## 12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because these provisions do not themselves make any material changes to the costs associated with the respective Acts.

## 13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## 14. Monitoring & review

14.1 The Department does not propose to monitor the effects of this instrument. The instrument does not include a statutory review clause as it contains no regulatory measures.

## 15. Contact

15.1 Mussa Awaleh at the Department for Levelling Up, Housing and Communities Email: Mussa.Awaleh@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Camilla Sheldon, Deputy Director at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lee Rowley MP, Parliamentary Under Secretary of State in the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.