EXPLANATORY MEMORANDUM TO

THE BUILDING SAFETY REGULATOR (ESTABLISHMENT OF NEW BODY AND TRANSFER OF FUNCTIONS ETC.) REGULATIONS 2026

2026 No. 20

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 and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Catherine Adams, Director, Building Systems and Insights at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Samantha Dixon MBE MP, Minister for Building Safety, Fire and Democracy at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

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

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The functions of the building safety regulator were given to the Health and Safety Executive (HSE) by the Building Safety Act 2022 (the 2022 Act).

4.2 This instrument establishes a new body that will be sponsored by, and has reporting obligations to, the Ministry of Housing, Communities and Local Government (MHCLG), and transfers the building safety regulator functions from HSE to this new body. The new body is to be called the Building Safety Regulator (BSR).

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales but any amendment or repeal to any legislation in the instrument has the same extent as the provision it is amending or repealing.

4.4 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 2018 Hackitt report, commissioned after the Grenfell Tower tragedy, proposed a blueprint for what became the new high-rise building regulatory regime. Much of this was brought into law under the 2022 Act. A key part of this was the establishment of the functions of the building safety regulator (the regulator). The regulator's purpose is threefold:

a. To regulate higher-risk buildings.

b. To raise safety standards across all buildings.

c. To help professionals in design, construction, and building control to improve their competence.

5.2 The Hackitt report recommended that the regulator was initially established as part of HSE, which is an arm's length body sponsored by the Department for Work and Pensions (DWP). This approach enabled the Government to mobilise the regulator at pace, under the leadership of an organisation with an established reputation. The regulator was able to benefit from HSE's experience operating as a proportionate and robust regulator, and its experience collaborating with other regulators.

5.3 Alongside this recommendation, Dame Judith Hackitt made clear that a review of where the regulator is housed should take place within five years of the passing of the 2022 Act - to monitor and assess whether it remained appropriate to house the regulator within HSE.

5.4 Since HSE is sponsored by DWP, the building safety directorate within HSE reports into DWP as part of regular sponsorship arrangements. Whilst DWP ministers are responsible for general oversight of HSE, MHCLG ministers are responsible for the building safety regime. This creates complex accountability and governance mechanisms, with dual reporting lines: one to DWP via the HSE board and Quarterly Accountability Review, and another to MHCLG through monthly assurance boards and regular ministerial meetings.

5.5 Since the policy intention was always to keep the body where the regulator should be housed under review, time-limited powers were included in the Levelling Up and Regeneration Act 2023 (the 2023 Act) to enable the Government to move the regulator out of HSE. These powers allow for the regulator to be transferred to an existing or new body outside of HSE within 24 months of the Grenfell Tower Inquiry's final report being given to Parliament. The final report of the Grenfell Tower Inquiry was presented to Parliament on 4 September 2024.

5.6 In June 2025, Ministers took the decision to move the functions of the regulator out of HSE to an arm's-length body called the Building Safety Regulator (BSR). This decision was taken for the reasons detailed below.

5.7 Firstly, establishing the regulator as a specific body outside of HSE and accountable to MHCLG lays the foundation for implementing an eventual single construction regulator. This aligns with the lead recommendation from Phase 2 of the Grenfell Tower Inquiry to establish a single construction regulator that reports to a single Secretary of State, which the Government accepted in March 2025.

5.8 Secondly, since the regulator became the building control authority for higher risk buildings in October 2023, there have been operational challenges. These have most notably impacted the processing times of Gateway 2 applications the planning

application stage before building work starts. Approvals of applications through Gateway 2 are necessary to allow for the construction of new high-rise residential buildings and for the remediation of unsafe cladding. Moving the regulator to an arm's length body sponsored by MHCLG will provide clearer lines of oversight of BSR operations and lines of accountability for delivery.

5.9 Furthermore, the decision to move the regulator out of HSE to an arm's length body will provide dedicated leadership and governance to the regulator's operations, greater operational flexibility, and will enable better engagement with key stakeholders.

5.10 The BSR will maintain its operational independence with its own powers, strategic plan, and programme of work, as outlined in the 2022 Act. This move does not change the functions of the regulator or the ministerial powers and responsibilities which are set out in the 2022 Act. This instrument will therefore enable the smooth transfer of legal powers to ensure that the regulator can continue to perform its functions without any interruption in its movement from HSE to a new body. The instrument ensures that the regulator has the legal basis to continue its functions under a new body.

5.11 The instrument sets out:

- That the BSR will be an Executive Non-Departmental Public Body with non-Crown status, in accordance with the classification given by the Cabinet Office.
- That the board of the new body should have a minimum of three further non-executive directors as board members, in addition to the Chair and Chief Executive Officer. This is in line with MHCLG requirements and comparatively sized arm's length bodies. A minimum of three different non-executive directors can ensure that the right range of expertise sits on the board of the BSR.
- The terms of appointments of members, terms on renumeration of members, terms of appointment of staff, terms of financial provision and terms on establishing committees and sub-committees mirror the same governance arrangements of the existing regulator, as set out in the 2022 Act.
- The provisions on procedures, conflicts of interest, delegation, and member's interests to mirror the same arrangements of the existing regulator, as set out in the 2022 Act.
- Provisions on annual reports and accounts, and their being laid before Parliament, in line with existing arrangements for the existing regulator as set out in the 2022 Act.
- That the Secretary of State of MHCLG has the power to give directions to the BSR as relates to its building functions, or in the interests of building safety mirroring the arrangements outlined for the existing regulator, as set out in the 2022 Act.

What was the previous policy, how is this different?

5.12 The instrument does not change policy because it does not change the way that building safety regulation is implemented. Instead, it changes the institutional arrangements, legal accountabilities and governance underpinning the regulator, moving it to a new standalone arm's length body, the BSR. It preserves the operational independence of the regulator, as outlined in the 2022 Act.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is the first use of the powers in section 233 of the 2023 Act, which allows the Secretary of State to replace the building safety regulator in HSE with a new body using secondary legislation.

6.2 The 2022 Act set out the legal framework for the formation of an enhanced regulatory regime for fire and structural safety for high-rise buildings and named HSE as the regulator.

6.3 Section 2(1) of the 2022 Act specified HSE as the building safety regulator. Section 233 of the 2023 Act provides that the Secretary of State may replace HSE as the building safety regulator with another existing or new body. The provision also includes the power to amend the Health and Safety at Work etc. Act 1974 (The 1974 Act), the Building Act 1984 (the 1984 Act), the 2022 Act, the Town and Country Planning Act 1990 and section 54 of the Planning and Compulsory Purchase Act 2004 in order to confer the functions of the building safety regulator on the new body, the BSR.

6.4 Any regulations under this section must be made no later than 24 months after the final report of the Grenfell Tower Inquiry is presented to Parliament in accordance with section 26 of the Inquiries Act 2005.

6.5 In this instrument, we also amend the following primary legislation to include reference to the new body. Where previously these Acts referred to HSE, because the regulator was housed in HSE, they now need to refer to the new body. This applies to the following:

- The Public Records Act 1958 Schedule 1, Paragraph 3.
- The Parliamentary Commissioner Act 1967, Schedule 2.
- The House of Commons Disqualification Act 1975 Schedule 1, Part 2.
- The Freedom of Information Act 2000, Schedule 1, Part 6.
- The Equality Act 2010, Schedule 19, Part 1.

6.6 In the same vein, the instrument makes amendments to secondary legislation to ensure the BSR is appropriately referred to. These are in:

- The Legislative and Regulatory Reform (Regulatory Functions) Order 2007.
- Town and Country Planning (Development Management Procedure) (England) Order 2015.
- The Economic Growth (Regulatory Functions) Order 2017.
- The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017.
- The Official Statistics Order 2023.

6.7 Because the 1974 Act provides the legal underpinning for HSE, where the regulator has previously been housed, amendments are needed to remove references to the building safety regulator from that Act. These changes largely reverse the 1974 Act to its state before the amendments made to it by the 2022 Act

6.8 Elsewhere we have amended other legislation to now refer to the BSR in place of, or in addition to, HSE where necessary.

Why was this approach taken to change the law?

6.9 The amendments to the existing legislation (the 1984 Act, the 2022 Act, the 1974 Act and other miscellaneous legislation) are necessary to confer the functions of the

building safety regulator on the new body and make consequential amendments relating to replacing HSE as the regulator.

7. Consultation

Summary of consultation outcome and methodology

7.1 As this does not affect the public and instead affects governance and the internal machinery of Government, a formal public consultation is not considered necessary.

8. Applicable Guidance

8.1 We do not propose to issue guidance for the instrument, as it only affects governance arrangements for the regulator.

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 impact on businesses and regulatory burden that will be brought about by the new regulator is no different from the impacts already detailed and considered during the placing of the functions of the building safety regulator in HSE in 2022.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on the public sector because there is no change from the existing impacts on the public sector incurred under the 2022 Act.

9.3 For the main Impact Assessments that cover the impacts of the regulator as an organisation on all affected groups, we point to the following:

- Part 3: The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023[1]
- Part 4: The Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023 - Impact Assessment[2]

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The formal review mechanism for the regulatory regime is laid out in section 162 of the 2022 Act. This stipulates that the Secretary of State must appoint an independent person to carry out a review of the effectiveness of the regulator within five years of the passing of the 2022 Act (the 2022 Act was given Royal Assent on April 28, 2022).

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The instrument makes the first use of the enabling powers in section 233 of the 2023 Act.

[1] https://www.legislation.gov.uk/ukia/2023/94/pdfs/ukia_20230094_en.pdf
[2] https://www.legislation.gov.uk/uksi/2023/907/impacts

12. European Convention on Human Rights

12.1 The Minister for Building Safety, Fire and Democracy has made the following statement regarding Human Rights:

"In my view the provisions of the Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 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").